# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

**GUD NO. 10358**

**COMMISSION REMAND**
**RATE-SETTING PROCEEDING REGARDING WESTLAKE PIPELINE**
**SEVERED FROM GUD NO. 10296**

**APPEARANCES**:

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**PROCEDURAL HISTORY:**

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|---|---|
| Docket Established - Severed from GUD No. 10296: | May 14, 2014 |
| Hearing on the Merits: | August 6 – 7, 2014 |
| Heard By: | Cecile Hanna-Administrative Law Judge<br>Rose Ruiz-Technical Examiner |
| Record Closed: | September 19, 2014 |
| PFD Issuance: | December 16, 2014 |
| Commission Remand Hearing: | October 26 – 27, 2015 |
| Commission Remand Record Closed: | December 18, 2015 |
| Commission Remand PFD Issuance: | April 28, 2016 |
| Statutory Deadline: | None |

## STATEMENT OF THE CASE

This Commission Remand Proposal for Decision is the rate segment of a bifurcated case arising from the complaint filed by Eastman alleging in part that Westlake's proposed 2013 Tariff rate of $3.50 per hundred pounds of ethylene transported on the Westlake Pipeline, is neither just nor reasonable. The Commission issued a Final Order on December 9, 2014, in the companion case, GUD No. 10296, adopting the Examiners' Recommendation finding discrimination and approving a Tariff that continues backhaul and exchanges services.

In this case, the Commission is asked to consider whether the rate in Westlake Pipeline's July 2013 Tariff that increases the rate for all volumes of ethylene transported or exchanged from $1.90 per 100 pounds for the first 320,000 pounds in a single day and $0.70 per 100 pounds for each additional amount transported or exchanged in a single day to $3.50 per 100 pounds of ethylene for all volumes transported, is just and reasonable.

The Commission considered the first Proposal for Decision on February 10, 2015 and February 24, 2015. In the original Proposal for Decision, the Examiners recommended that the Commission find that Westlake's 2013 Tariff rate of $3.50 per 100 pounds for all volumes of ethylene transported or exchanged is not just and reasonable. Further, the Examiners recommended that the Commission adopt the Examiners' recommended rate of $2.45 per 100 pounds of ethylene transported or exchanged.

On February 24, 2015, this docket was remanded for further evidence related to setting a market-based rate. After careful consideration of all evidence presented, the Examiners recommend the following:

- Westlake failed to meet its burden of proof to establish that its 2013 Tariff rate of $3.50 per hundred pounds of ethylene transported is just and reasonable. The ALJ and Technical Examiner find that (1) the market is not competitive; (2) the preponderance of the credible evidence does not show that the six pipelines compared are substantially similar; (3) and the preponderance of the credible evidence does not demonstrate that distance is the primary driver for a pipeline rate. The ALJ and Technical Examiner respectfully recommend the application of a cost-of-service based rate as presented in the original hearing, which recommended that a rate of $2.45 per hundred pounds of ethylene transported or exchanged is just and reasonable.

- In the alternative, if the Commission determines that a market-based rate is appropriate in this proceeding, the ALJ and Technical Examiner respectfully recommend adopting the highest end of the average actual 2013 tariff rate, as presented by Dr. Fairchild, which is $2.12 per hundred pounds of ethylene transported or exchanged.

- As a second alternative, if the Commission determines that a market-based rate is appropriate in this proceeding, the ALJ and Technical Examiner respectfully recommend a market-based rate of $2.96 per hundred pounds transported or exchanged based upon Mr. Lerman's methodology but adjusted to include only the most comparable length of haul to the Westlake Pipeline.

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# COMMISSION REMAND PROPOSAL FOR DECISION

## 1. Background and Procedural History

On July 29, 2013, Eastman Chemical Company ("Eastman") filed a Complaint against Westlake Ethylene Pipeline Corporation ("Westlake Pipeline") alleging that Westlake Pipeline had failed to comply with certain requirements of a common carrier pipeline as set out in the Common Carrier Act (TEX. NAT. RES. CODE, Chapter 111). The filing was docketed as Gas Utilities Docket No. 10296.

On January 7, 2014, the Hearing Examiners set aside Westlake Pipeline's 2013 Tariff effective February 5, 2014 and reinstated the 2002 Tariff pending resolution of this proceeding. A public hearing was held on May 6, 2014, to consider the issues set out in the Notice of Hearing for GUD No. 10296. On May 14, 2014, the rate-setting issues were severed into GUD No. 10358, *Rate-Setting Proceeding Regarding Westlake Pipeline Severed from GUD No. 10296.* The Commission issued a Final Order in GUD No. 10296 on December 9, 2014.

As for GUD No. 10358, a hearing on the merits was held on August 6-7, 2014. The Commission considered GUD No. 10358 at Public Meeting on February 10, 2015 and February 24, 2015. On February 24, 2015, the Commission rejected the Proposal for Decision and remanded the proceeding for further evidence related to setting a market-based rate. Specifically, the Commission directed the Examiners to take additional testimony and exhibits as to what similarly situated carriers are charging for the transportation of ethylene. The Commission directed the Examiners to evaluate this evidence and recommend what a just and reasonable market-based rate should be in this case based upon market conditions as authorized by Section 81.061 of the Texas Natural Resources Code. The Commission Remand hearing on the merits was held on October 26-27, 2015. Final closing briefing by the parties was received on December 18, 2015.

In this docket, the issue before the Commission is whether the 2013 Tariff rate of $3.50 per hundred pounds of ethylene transported on the Westlake Pipeline is just and reasonable, and if not, for the Commission to set a just and reasonable common carrier pipeline rate for Westlake Pipeline.[1]

This is a case of first impression under Texas Natural Resources Code §81.061. There has been no dispute regarding the statutes that guide the Commission's review of Westlake's proposed rate of $3.50 per hundred pounds of ethylene shipped. These statutes are identified in the December 2014 Proposal for Decision. These statutes give the Commission a variety of tools it can use in determining a just and reasonable rate for a common carrier pipeline, including cost-of-service or market-based rate setting methodologies.

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[1] This docket is the rate segment of a bifurcated case arising from the complaint filed by Eastman alleging in part that Westlake's proposed 2013 Tariff rate of $3.50 per hundred pounds of ethylene transported on the Westlake Pipeline, is neither just nor reasonable. The Procedural History, Section 2 of the original Proposal for Decision, contains a detailed discussion of the scope of this rate case, GUD No. 10358 and the companion case, GUD No. 10296, related to Eastman's allegations of discrimination by a common carrier.

In the original proceeding, the Examiners found that Westlake failed to support its proposed rate and relied upon the cost based, return on investment method of determining a rate, as provided for in the Common Carrier Act, Section 111.183 of the Natural Resources Code. Section 111.183 is entitled "Basis for Rate" and limits the basis for ratemaking to a cost based, return on investment methodology to set common carrier rates. Yet, the next sequential section, Section 111.184, is in apparent conflict as it is entitled, "Discretion of Commission" and does not plainly state that the Commission may set a market-based rate, but the provision uses market-based terminology to describe the Commission's authority to "ha[ve] reasonable latitude in establishing and adjusting competitive rates."[2]

Regardless, this apparent inconsistency is cleared up by the 2008 provision, Section 81.061(b), where the Legislature has clarified that the Commission "may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding."[3] It is this authority to establish "competitive rates" using a "market-based" rate-setting method that the Commission has directed this remand proceeding to take evidence on whether and how a market-based rate may be set for the Westlake Pipeline, under both Sections 111.184 and 86.061(b).

The market-based rate statute was introduced and passed by the Legislature as House Bill 3273 in 2007. The House Energy Resources Committee analysis of the bill notes that, prior to the bill's passage, the Commission established the Natural Gas Pipeline Competition Study Advisory Committee. The purpose of the Committee "was to give the Commission the benefit of the members' collective business, technical, and operating expertise and experience to help the Commission review competition in the Texas intrastate pipeline industry, assess the effect of current statutes and rules on such competition, and develop recommendations for changes to statutes or rules that may be necessary." The Committee submitted its recommendations in the form of the "Natural Gas Pipeline Competition Study," which the Commission submitted to the Governor and the Legislative Budget Board on October 30, 2006. House Bill 3273 was the culmination of discussions among many industry representatives to address the Study's recommendations. In the Study, the Advisory Committee recommended that the Legislature should give the Commission the authority to use either a cost-of-service method or a market-based method for setting rates in formal rate proceedings. This authority was then in fact granted by the Legislature by House Bill 3273, now codified as Section 81.060 of the Natural Resources Code. Although the questions were originally prompted by gas pipeline issues, the Legislature did not limit the Commission's authority to gas pipelines, which it could have done by amending the Utilities Code. Instead, it amended the statutes related to the Commission's general jurisdiction.

The exact factors that are to be considered in determining a competitive market-based rate for a common carrier pipeline are not dictated by the Texas statutes. Nor is there any Commission precedent applying the market-based rate statute. However, the authority to set a competitive, market-based rate is not without precedent in Texas law. The Legislature had previously granted the Commission similar rate-setting authority specifically for gas utilities in pipeline-to-pipeline transactions or in providing service to transportation, industrial, and similar

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[2] Tex. Nat. Res. Code § 111.184.
[3] Tex. Nat. Res. Code § 81.061(b).

large-volume contract customers.[4] Texas Utilities Code Section 104.003 states that a rate is considered to be just and reasonable if any one of three conditions is met:

(1) neither the gas utility nor the customer had an unfair advantage during the negotiations;

(2) the rate is substantially the same as the rate between the gas utility and at least two of those customers under the same or similar conditions of service; or

(3) competition does or did exist with another gas utility, another supplier of natural gas, or a supplier of an alternative form of energy.[5]

While this statute's application is limited to gas utilities, and not to the services provided by the Westlake Pipeline, it may provide guidance as to market-based rate-setting methodologies that the Legislature has found acceptable. The enumerated conditions in the gas utility statute show a legislative deference to: 1) rates negotiated where neither party had an unfair advantage during the rate negotiations; 2) rates that are substantially the same as other rates charged under the same or similar conditions of the service; and 3) rates that are developed in a competitive environment between parties.

Since Westlake is the party with the burden of proof in this proceeding, it is central to this remand to determine whether Westlake has provided the Commission sufficient evidence to establish a competitive market-based rate for the Westlake Pipeline and, if so, what is that competitive market-based rate or rates for the services provided under the Westlake Pipeline tariff?

A prehearing conference for the Commission Remand hearing was held on March 23, 2015. During the prehearing conference, the Examiners instructed the parties, as follows:

> The Examiners have received the Commission's instruction for the remand, and that this is a case of first impression under Texas Natural Resources Code §81.061. The Examiners would anticipate evidence related to what a reasonable market-based rate standard is. For example, whether the Commission should follow the FERC approach, some learned treatise approach, other states, or something entirely different as proposed by the parties.
>
> Then, the Examiners would anticipate the parties putting on evidence of factors that support that standard. For example, the parties might consider looking at similarly situated pipelines defined by the standard and applying the various proposed factors.
>
> Again, as an example, the parties may consider defining the parameters of similarly situated pipelines based on factors like mileage, age, volumes, type of contract on file, which is either firm or interruptible service, diameter of the

[4] Tex. Util. Code Ann. § 104.003.
[5] Tex. Util. Code Ann. § 104.003.

pipeline, product transported and any other factors that the parties believe are relevant based on their proposed standard. In the alternative, the parties might consider putting on evidence as to why those factors, such as those I just mentioned, are inapplicable to their standard.[6]

After careful consideration of all of the evidence presented and the arguments of the parties, the ALJ and Technical Examiner recommend that the evidence in this remand proceeding demonstrates that the market to and from Longview and Mont Belvieu is not a competitive market. Consequently, the ALJ and Technical Examiner respectfully recommend that a true market-based rate may not be set in a non-competitive market. This conclusion requires a cost-of-service based approach to rate making as presented in the original Proposal for Decision.

On the other hand, the ALJ and Technical Examiner respectfully present two alternate proposed Final Orders relying upon market-based methodology, if after review of the evidence, the Commission determines that a competitive market exists and that Westlake has established that the proposed rate is just and reasonable.

## 2. Existing and Proposed Tariffs

The existing tariff in this docket is the 2002 Mustang Pipeline Tariff, which is a two-tiered declining block rate structure charging $1.90 per 100 pounds for the first 320,000 pounds shipped per day and $0.70 per 100 pounds for all remaining volumes shipped the same day. In July 2013, the 2013 Westlake Pipeline Tariff was filed with the Commission that proposes to charge a rate of $3.50 per 100 pounds for all volumes transported. The Commission in this case is being asked to determine whether the 2013 Westlake Pipeline Tariff is just and reasonable. Table 2.1 below summarizes the rates contained in these two tariffs.

**Table 2.1**
**Tariff – Rate Summary Comparison**

| | **2002 Revised – Mustang Pipeline Tariff No. M-3** | **Filed 2013 Westlake Tariff Tariff No. 1.0.0** |
|---|---|---|
| Tier 1 | $ 1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day | $ 3.50 per 100 pounds for all pounds transported in a single day from an Origin Point to the Delivery Point |
| Tier 2 | $ 0.70 per 100 pounds for each additional amount transported or exchanged in a single day | |

[6] Transcript of Prehearing Conference, March 23, 2015, pp. 6-7.

## 3. Overall Position of the Parties

### A. Westlake's Position

Westlake maintains that the market-based approach is a comparative approach rather than a cash flow analysis like the cost of service studies performed in the original part of the case by Dr. Daniel S. Arthur, Principal of the Brattle Group, Economic and Management Consulting Firm, and Dr. Bruce Fairchild, Principal in Financial Concepts and Applications, Inc. (FINCAP), a firm engaged in financial, economic, and policy consulting to business and government. According to Westlake's witness in this remand proceeding, David B. Lerman, a Managing Director in the Economic Consulting Practice of FTI Consulting, Inc., the market-based approach compares tariff rates of similar pipelines and/or the rates for competing transportation modes.

Moreover, Mr. Lerman testified that the market-based rate approach does not consider the underlying capital costs, equity, debt, depreciation, tax regime, capacity, age, rate of return, operating and maintenance costs and similar financial information of the surveyed pipelines because most market participants consider this particular information to be confidential or proprietary.[7] He also believes that the market-based approach is indifferent to the particulars of any pipeline, so long as, the pipeline's services meet the buyer's requirements such as available capacity, timely delivery, and no contamination or unacceptable losses.[8]

Mr. Lerman performed distance scaled tariff comparisons and regression analyses to support the pipeline's conclusion that the proposed $3.50 per 100 pounds of ethylene transported per day is a reasonable rate. It is Westlake's position that the analyses are based upon methodology that Eastman used when it owned the pipeline that compares other ethylene tariff rates, as well as the rates of alternative means of transportation.

### B. Eastman's Position

Eastman maintains that the rate proposed by Westlake for its common carrier ethylene pipeline, $3.50 per hundred pounds, was filed by Westlake shortly after Westlake Chemical employees saw the existing 2002 tariff in an on-line data room that Eastman Chemical had set up for prospective buyers of Eastman's Longview ethylene cracking facilities.[9] Eastman believes that Westlake then quickly changed the existing tariff that would be applicable to a buyer wishing to use the Westlake Pipeline. Westlake relied upon a single tariff found from an Internet search, Concha Chemical Pipeline LLC (Concha Pipeline), which is an interstate ethylene pipeline not subject to the Commission's jurisdiction. According to Eastman, Westlake then set its new tariff rate equal to the highest rate charged by the Concha Pipeline, $3.50 per hundred pounds.[10] Eastman argues that Westlake's rate-setting process did not rely upon any legitimate rate-setting method, either cost-of-service or market-based.

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[7] Westlake Exh. 201, Remand Direct Testimony of David B. Lerman, p. 5.
[8] *Id.*
[9] GUD NO. 10358, Examiners' Letter No. 13, Proposal for Decision (GUD No. 10358 PFD) at Finding of Fact (FOF) No. 45 (Dec. 16, 2014).
[10] GUD NO. 10358 PFD at FOF No. 47.

In remanding the case for additional evidence, Eastman asserts that Westlake had a rare opportunity to justify a hurriedly proposed rate. For the remand, the Commission directed that additional evidence regarding the establishment of a market-based rate appropriate for the Westlake Pipeline be taken. Eastman argues that Westlake could have presented additional evidence of how rates are set in the market for ethylene transportation or in the pipeline industry more generally. Westlake could have presented evidence of how other regulatory authorities administer market-based rates. Instead, Eastman asserts that Westlake offers substantially the same evidence that was available to the Commission at the time of the remand.

Eastman believes that the only reliable evidence related to a market-based rate in the remand proceeding is a negotiated rate from an Ethylene Sales Agreement whereby the pipeline's parent company agreed to have its pipeline affiliate perform physical transportation of certain shipments of ethylene at $0.96 per hundred pounds[11] and perform exchanges at no cost. In the alternative, if the tariff rates of other ethylene pipelines are used to set a rate, Eastman requests that the Commission rely upon actual tariff rates that range between $1.67 and $2.12 per hundred pounds, rather than the distance adjusted rates put forth by Westlake.[12]

## 4. Relevant Market

### A. Westlake's Position

For the purposes of setting a market-based rate, Westlake argues that the relevant market is the network of "Gulf Coast" common carrier ethylene pipelines delivering to and from Mont Belvieu. Mont Belvieu is the largest storage and pipeline interconnection center for ethylene in the United States.[13] Mont Belvieu is connected by ethylene pipelines to New Orleans to the east, Corpus Christi to the west, the Houston Ship Channel to the south, and Longview to the north.[14]

Mr. Lerman testified that most of the petrochemical complexes that consume ethylene and make ethylene based products are in the Gulf Coast in Louisiana and Texas.[15] According to Mr. Lerman, since the majority of these market participants are in the Gulf Coast, the pipelines and market participants that they do business with are all going to be affected equally by economic changes in pricing, demand, and supply.[16] He believes that it is appropriate to compare pipelines that are subject to the same market forces and that are in business for the same reasons. Mr. Lerman concludes that pipelines with a hub in Mont Belvieu are the relevant market that he identifies as the Gulf Coast market. He adds that if you limit the market to twin pipelines between the same origin and destination points, as argued by Eastman, that a market-based study may not be performed because there is not another pipeline with the identical origin and destination point as Mont Belvieu and Longview.[17]

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[11] The contract provides for a rate for actual transportation of $0.80 per hundred pounds plus an escalator which makes the current rate $0.96 per hundred pounds.
[12] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 27.
[13] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 8 and DBL Exh. 6.
[14] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 6.
[15] Remand Transcript of Testimony, Vol. II, David B. Lerman, p. 80.
[16] Remand Transcript of Testimony, Vol. II, David B. Lerman, p. 81.
[17] Remand Transcript of Testimony, Vol. II, David B. Lerman, pp. 82-83.

### B. Eastman's Position

Eastman claims that Westlake's "Gulf Coast" market is simply a group of ethylene pipelines that are allegedly "similarly situated" to the Westlake Pipeline because of their location in the U.S. Gulf Coast. Eastman refers to a map presented by Dr. Fairchild that shows that the Westlake Pipeline runs north-south approximately 195 miles between Longview and Mont Belvieu.[18] Eastman maintains that the other six ethylene pipelines used by Mr. Lerman in his "Gulf Coast" market are located in or near the numerous petrochemical complexes in the vicinities of Houston, Beaumont, and Baton Rouge. Eastman points out that when viewing Dr. Fairchild's map, that none of these other ethylene pipelines is geographically similarly situated to the Westlake Pipeline, which transports ethylene between Mont Belvieu and Longview or Longview and Mont Belvieu. Most importantly, if a shipper needs to ship ethylene from Mont Belvieu to Longview, none of the other six pipelines studied by Mr. Lerman in his Gulf Coast market is a viable substitute for the Westlake Pipeline.[19]

### C. Recommendation of ALJ and Technical Examiner

After reviewing the evidence in this proceeding, the ALJ and Technical Examiner concur with Eastman that Westlake's proposed "Gulf Coast" market is a group of ethylene pipelines that are located in the U.S. Gulf Coast petrochemical complexes; however, none of these pipelines provide a competitive alternative for shippers on the intrastate Westlake Pipeline that transports ethylene north-south approximately 195 miles back and forth between Longview and Mont Belvieu. The relevant market is the market between the pair of the receipt and delivery points between Mont Belvieu and Longview. Both Mr. Lerman and Dr. Fairchild testified that there is not another ethylene pipeline that runs from Longview to Mont Belvieu. Moreover, the location of the facilities and receipt and delivery points of the other pipelines identified in this proceeding differ significantly from the location and receipt and delivery points of the Westlake Pipeline.[20] Absent another pipeline to transport ethylene to and from the points required by the shippers, no competition to the Westlake Pipeline exist, nor does a reasonable alternative form of transportation, which is discussed below.

Conversely, two alternative Proposed Final Orders are respectfully presented with this Commission Remand Proposal for Decision, in the event that the Commission concurs with Westlake that the Gulf Coast area of common carrier pipelines comprise a competitive market based upon the evidence presented by Westlake.

## 5. Similarly Situated Pipelines

### A. Westlake's Position

According to Westlake, a market-based approach works through comparison with similarly situated pipelines. Mr. Lerman testified to be similarly situated, a pipeline must: (1)

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[18] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, Schedule BHF-R-2, which is attached to this Remand Proposal For Decision as "Appendix 1."
[19] Remand Transcript of Testimony, Vol. II, David B. Lerman, p. 123.
[20] *Id.*

have capacity, (2) be a common carrier pipeline, (3) provide the same service (i.e., pipeline transportation of ethylene), and (4) serve the same market (Gulf Coast).[21]

Westlake believes that the Commission should not consider differences in common carrier pipelines like age, original cost, throughput, diameter, and operating costs because such information about other pipelines is rarely available as it is considered proprietary.[22] Mr. Lerman testified that those factors are relevant to a cost of service approach but not a market-based approach.[23] Mr. Lerman testified further that reviewing these elements is closer to evaluating an asset versus evaluating the provision of a service.[24] Mr. Lerman says that relevant factors to a market-based approach are those that are intrinsic to the provision of a service, regardless of who provides it.[25]

He testified that when comparing a service, buyers of transportation are mainly concerned that the seller has available capacity for the buyer's needs and will deliver for the buyer in a timely manner without any unacceptable loss or contamination.[26] Further to be similarly situated, Mr. Lerman says that the pipelines must be available for hire by the public and publish tariffs.[27] In other words, this would exclude a pipeline that is proprietary or a private pipeline that the owner closes to the public.[28] Next, to be similarly situated, Mr. Lerman says these pipelines must also be in the relevant market described above as the Gulf Coast market.[29] Finally, a pipeline must be subject to the same general economic and market factors that influence the ethylene market in order to be considered similarly situated.

### B. Eastman's Position

It is Eastman's position that Westlake failed to establish that any of the pipelines that Mr. Lerman relies upon in his tariff comparison are "similarly situated" to the Westlake Pipeline. Eastman points out that Mr. Lerman failed to meet his own criteria for "similarly situated" because Mr. Lerman testified during cross-examination that he did not know whether any of the pipelines that he relies upon have available capacity.[30] When asked further if he still considered each of the pipelines he relies upon to be similarly situated, Mr. Lerman replied that he did because they each publish a tariff, and they say that they're open for business.[31] Eastman asserts that this criterion for "similarly situated," has no meaning because every single pipeline that ships a product such as ethylene or even natural gas would be "similarly situated."

Eastman requests that the Commission look to Commission Rule 7.115 as guidance to define a "Similarly-Situated Shipper."[32] This rule applies to gas utilities and defines a "Similarly-

[21] Remand Transcript of Testimony, Vol. II, David B. Lerman, pp. 130, 147-148.
[22] Remand Transcript of Testimony, Vol. II, David B. Lerman, pp. 31-33.
[23] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, pp. 11-13.
[24] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, pp. 10-12.
[25] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 11.
[26] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, pp. 10-12.
[27] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, pp. 10-12.
[28] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, p. 11.
[29] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, pp. 11-12.
[30] Remand Transcript of Testimony, Vol. II, David B. Lerman, pp. 33 and 147.
[31] Remand Transcript of Testimony, Vol. II, David B. Lerman, pp. 147-148.
[32] Text of Commission Rules 16 TEX. ADMIN. CODE §§7.115 and 7.7201 are attached to this Commission Remand Proposal for Decision as "Appendix 2."

Situated Shipper" as any shipper that seeks or receives transportation services under the "same or substantially the same, physical, regulatory, and economic conditions of service" as any other shipper. While this rule does not define what a similarly-situated transporter would be, Eastman believes that it sheds light on the weaknesses of Mr. Lerman's analysis. Eastman points out that Mr. Lerman provides no information regarding the physical conditions of service on the pipelines he considers similarly situated such as its age, diameter, and capacity. Likewise, Mr. Lerman fails to show any of the economic conditions of service like the extent pipeline is used, or any existence of unaffiliated shippers, according to Eastman.

### C. Recommendation of ALJ and Technical Examiner

Despite the directive of the Commission and the instruction at the Prehearing Conference, Westlake presented no evidence related to any differences in the common carriers of the six tariffs, except for the distance of the pipelines. Thus, no evidence was presented related to any of the six pipelines' age, original cost, throughput, diameter, capacity or operating costs. As stated by Mr. Lerman, this is because he believes such information to be proprietary and unavailable,[33] as well as more appropriately considered in a cost of service based approach.[34] As a result, Westlake requests the Commission find that factors relevant to a market-based approach are those that are intrinsic to the provision of a service, regardless of who provides it.

Mr. Lerman's definition for a pipeline to be similarly situated requires that the pipeline (1) have capacity, (2) be a common carrier pipeline, (3) provide the same service (i.e., pipeline transportation of ethylene), and (4) serve the same market (Gulf Coast).[35] In applying those factors, evidence was limited only to factor numbers two, three and four above. No evidence was presented related to any of the capacity of any of the pipelines. With no evidence presented for capacity combined with the previous finding that Mr. Lerman's defined "Gulf Coast" market does not constitute the same market as the Westlake Pipeline, then factors one and four are insufficient to establish Mr. Lerman's argument that the proposed six pipelines are similarly situated with the Westlake Pipeline.

If the Commission chooses to look at Commission Rule 7.115 as guidance, as suggested by Eastman, then the Commission may consider a definition such as any pipeline providing transportation under the "same or substantially the same, physical, regulatory, and economic conditions of service" as any other pipeline. The physical conditions of service on the pipeline that may be considered may relate to its age, diameter, and capacity. The economic conditions of service may be the extent that a pipeline is used, the existence of any unaffiliated shippers, and available capacity. Rule 7.115(B)(C) and (D) also provide in gas utilities that the Commission evaluate the location of facilities, the receipt and delivery points, and length of haul in their consideration of a "similarly-situated shipper." Translating this to a pipeline, the Commission might consider that the location of facilities, receipt and delivery points, and length of haul, may be factors that could be considered material in this proceeding.

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[33] Remand Transcript of Testimony, Vol. II, David B. Lerman, pp. 31-33.
[34] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 11.
[35] Remand Transcript of Testimony, Vol. II, David B. Lerman, pp. 130, 147-148.

What is more, the Commission may consider a Pipeline Competition Study Advisory Committee similar to that of the Natural Gas Pipeline Competition Study Advisory Committee that brought together collective business, technical, and operating expertise and experience to help the Commission review in the Texas intrastate pipeline industry, assess the effect of current statutes and rules on such competition, and develop recommendations for changes to statutes or rules that may be necessary.[36]

## 6. Method to Set a Market-Based Rate

Westlake argues that the Commission should adopt a method to set rates based on a process that Westlake claims Eastman used when Eastman owned the pipeline.[37] Westlake calls this process the "Eastman Method." According to Westlake, the "Eastman Method" contains the following elements: (1) rate comparison from other common carrier ethylene pipelines on a distance adjusted basis; (2) rate comparison for alternative forms of ethylene transportation, also on a distance adjusted basis; and (3) selection of a primary rate based on the higher of the two elements. Westlake believes that this process was utilized by Eastman when it owned the pipeline and set its 2002 Tariff rate.

Westlake bases this argument on an Eastman Standard Operating Procedure document produced in discovery.[38] Section III.C of the referenced Standard Operating Procedure document, lists a number of elements to be considered, which Westlake reproduced,[39] as follows:

**Figure 6.1**
**"Eastman Method"**

C. In reviewing the tariff rates and tender quantities, the team should endeavor to set rates, rate/volume relationships, and tender quantities so that these parameters are justifiable based on market conditions or physical constraints. The following should be considered:

- Tariff structures for other similar pipelines adjusted for the distance of transport (see Attachment 1 for example).
- Costs for alternative means of transport of similar materials over comparable distances (i.e. rail or tank truck).
- Return on capital of Mustang Pipeline Company.
- The earnings impact on Eastman Co. of any recommended tariff or pipeline operating rate change due to applicable taxes.
- The bases used to set rates in the previous tariff review (The Utilities and Feedstocks Division secretary will maintain a permanent file relating to the tariffs and this documentation will be located there).

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[36] 16 TEX. ADMIN. CODE §7.7201(c) and Appendix 2 to this Commission Remand Proposal for Decision.

[37] Remand Transcript of Testimony, Vol. II, David B. Lerman, p. 116.

[38] Westlake Exh. 30, "Eastman Chemical Company Texas Operations, Utilities & Feedstocks Division, Standard Operating Procedures, effective October 31, 2001."

[39] Westlake Exh. 30, "Eastman Chemical Company Texas Operations, Utilities & Feedstocks Division, Standard Operating Procedures, effective October 31, 2001."

Westlake believes that this Eastman document establishes that it is proper to look not only at tariffs but also at alternative means of ethylene transportation, such as trucking and rail, for benchmarks by which to set a primary pipeline transportation rate.

On the other hand, Eastman maintains that Westlake uses the term "Eastman Method" in an attempt to leave the impression that Mr. Lerman's analysis is based upon an established market-based rate-setting method. Eastman points out that this is a two page, 13 year old document with some workpapers from discovery that Mr. Lerman knows little about. It was not until the hearing that Mr. Lerman realized the document was dated November 1, 2004 and therefore, Mustang Pipeline Company could not have used that document to set a rate for the pipeline in 2002.[40] Mr. Lerman testified that he had never seen the document prior to the case and doesn't know who drafted it or whether the Commission has ever reviewed it.[41] What is more, Eastman asserts that Mr. Lerman doesn't accurately follow the analysis discussed in the document that he relies upon. Finally, Eastman argues that Westlake fails to acknowledge that the Eastman rate was never contested nor subject to any review, but now that there are third-party shippers and a case before the Commission, it is proper to set the rate based upon the evidence in this docket.

### A. Westlake's Position Regarding Other Ethylene Tariffs

According to Westlake, the first element to consider when following the "Eastman Method" to set rates is to compare the rates of other Gulf Coast, common carrier ethylene pipelines.[42] In a comparison of the other ethylene tariff rates, Westlake expert witness, Mr. Lerman, conducted two main types of analyses, (a) distance scaled rate comparisons, and (b) regression analyses.[43] The distance scaled rate comparisons are presented to show that Westlake's proposed $3.50 per 100 pounds of ethylene transported is reasonable on the 195 mile Westlake Pipeline. Whereas, the regression analyses are primarily put forth as evidence to support Mr. Lerman's argument that the distance of the pipeline matters in regard to the pipeline's rate to transport ethylene.

#### (1) Distance Scaled Tariff Rates

As for the distance scaled tariff comparisons, Mr. Lerman testified that it is appropriate to review tariffs that are in effect in July 2013, as that is the date that Westlake filed its new tariff rate that is the subject of this proceeding.[44] Mr. Lerman evaluated Westlake's July 2013 proposed $3.50 per 100 pounds of ethylene transported rate by comparing it to the following six different common carrier ethylene pipeline tariffs from the Gulf Coast that he considers to be similarly situated, and that were also in effect in July 2013:[45]

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[40] Remand Transcript of Testimony, Vol. II, David B. Lerman, p. 28.
[41] Remand Transcript of Testimony, Vol. II, David B. Lerman, pp. 27-28.
[42] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, Exh. 24.
[43] Westlake Ex. 202, Lerman Remand Rebuttal Testimony, at Exh. 3 and Exh. 4 (Regression Analysis).
[44] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 14.
[45] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, pp. iii and 33 and Exhs. 6, 10 and 11; Remand Transcript of Testimony, Vol. II, David B. Lerman, pp. 80-83; and Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, pp. 10-12.

**Table 6.1**
**Ethylene Tariffs Effective as of 2013[46]**

| Pipeline | Pipeline Length | Effective Date |
|---|---|---|
| Chevron Phillips Chemical[47] | 13 | 7/1/13 |
| Concha Chemical[48] | 230 | 7/1/13 |
| Enterprise TE Products[49] | 57 | 11/1/13 |
| ExxonMobil[50] | 15 | 4/1/08 |
| Koch[51] | 8 | 10/1/10 |
| SouthTex 66[52] | 45 | 7/1/13 |

After identifying the pipelines and obtaining the distance and tariffed rates, Mr. Lerman scaled the rates to the equivalent distance of the 195 mile Westlake Pipeline from Mont Belvieu to Longview. Next, Mr. Lerman calculated a weighted average of these distance scaled rates. Mr. Lerman's final analysis indicates a weighted-average tariff rate for transporting 100 pounds of ethylene a distance of 195 miles to be $5.19, which is higher than Westlake's proposed $3.50 per 100 pounds rate.[53]

Specifically, Mr. Lerman's process to distance scale the pipeline tariff rates includes the following steps. First, divide the rate by the miles of every origin and destination pair contained in the six 2013 tariffs to convert to a per mile rate. ($/100 pounds to $/100 pounds per mile) Secondly, multiply the rate per mile by 195 miles, which is the equivalent distance of the Westlake Pipeline.[54] According to Westlake, that allowed Mr. Lerman to restate all of the rates on a common basis by multiplying each $/100 lbs/mile rate by 195 miles. Thirdly, he placed the adjusted rates into 50-cent buckets. For example, a rate within the $2.25 to $2.75 range would be placed in the $2.50 bucket.[55]

Mr. Lerman testified that there is generally a relationship between the tariff rate and the distance between the origin and destination pairs.[56] Of the six tariffs studied, only the Concha Chemical Pipeline has distances between the origin and destination pairs greater than 75 miles. Consequently, Mr. Lerman believes that the Concha Chemical Pipeline more closely resembles the Westlake Pipeline in terms of the distance between the origin and the destination than the other ethylene pipelines reviewed.[57] Mr. Lerman testified that at distances above 75 miles, there are no tariffs with rates below $3.50 per 100 pounds of ethylene transported.[58]

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[46] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, Exhs. 6 and 10.
[47] Westlake Exh. 65.
[48] Westlake Exh. 67.
[49] Westlake Exh. 66.
[50] Westlake Exh. 64.
[51] Eastman Exh. 202.
[52] Westlake Exh. 82.
[53] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, pp. iii, 33-34 and DBL Exhs. 28 and 29.
[54] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 33.
[55] Remand Transcript of Testimony, Vol. II, David B. Lerman, p. 21 and DBL Exhs. 28 and 30.
[56] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, pp. 20-22, 33 and Exhs. 8 and 10.
[57] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 19.
[58] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 22 and DBL Exh. 10.

Yet, Mr. Lerman testified further that there are two exceptions in the Concha Chemical Pipeline tariff related to his observation that as the distance between the origin and the destination increases, then the tariff rate increases. These exceptions apply to tariff rates for two relatively short distances in the Concha Chemical Pipeline, (a) Napoleonville to Plaquemine (27 miles with a rate of $3.49 per 100 pounds); and from PetroLogistics Choctaw to Napoleonville (23 miles with a rate of $3.50 per 100 pounds).[59] Thus, Mr. Lerman believes it appropriate to adjust his analysis by excluding these two Concha tariff rates.[60]

Since there is only one pipeline, Concha, with distances greater than 75 miles, Mr. Lerman conducted a subset of data for distances up to 75 miles.[61] Mr. Lerman believes that his results show that there is an observable relationship between the distance from origin to destination and the tariff rate charged.[62] As will be described further below, Mr. Lerman also conducted a regression analysis of these data points, excluding the two Concha Chemical Pipeline exceptions.[63]

What is more, Mr. Lerman excluded the Enterprise TE Products Pipeline Company LLC incentive rates within the tariff, as shown in Figure 6.2 below. Westlake argues that it is proper to exclude incentive rate tariffs because Westlake is not proposing an incentive rate.[64] Westlake argues that this keeps all rates on the same basis and avoids an apples-to-oranges comparison.[65]

Mr. Lerman believes that his analysis of all 2013 similarly situated ethylene common carriers compared on a distance adjusted basis demonstrates that distance influences the tariff rate whether the distance is less than 75 miles between the origin and destination, or, if the distance is greater than 75 miles between the origin and destination.[66] Mr. Lerman also testified that his results demonstrate that the weighted average rate charged to transport ethylene 195 miles in the Gulf Coast market is $5.19 per 100 pounds, as shown in Figure 6.3 below. Westlake notes that this rate is substantially higher than the $3.50 per 100 pounds rate proposed by Westlake. Mr. Lerman testified that as distance goes up, tariff rates go up because the longer the distance, costs increase for compression, maintenance, and inspection. It follows, that a pipeline will increase rates more to transport a longer distance.[67]

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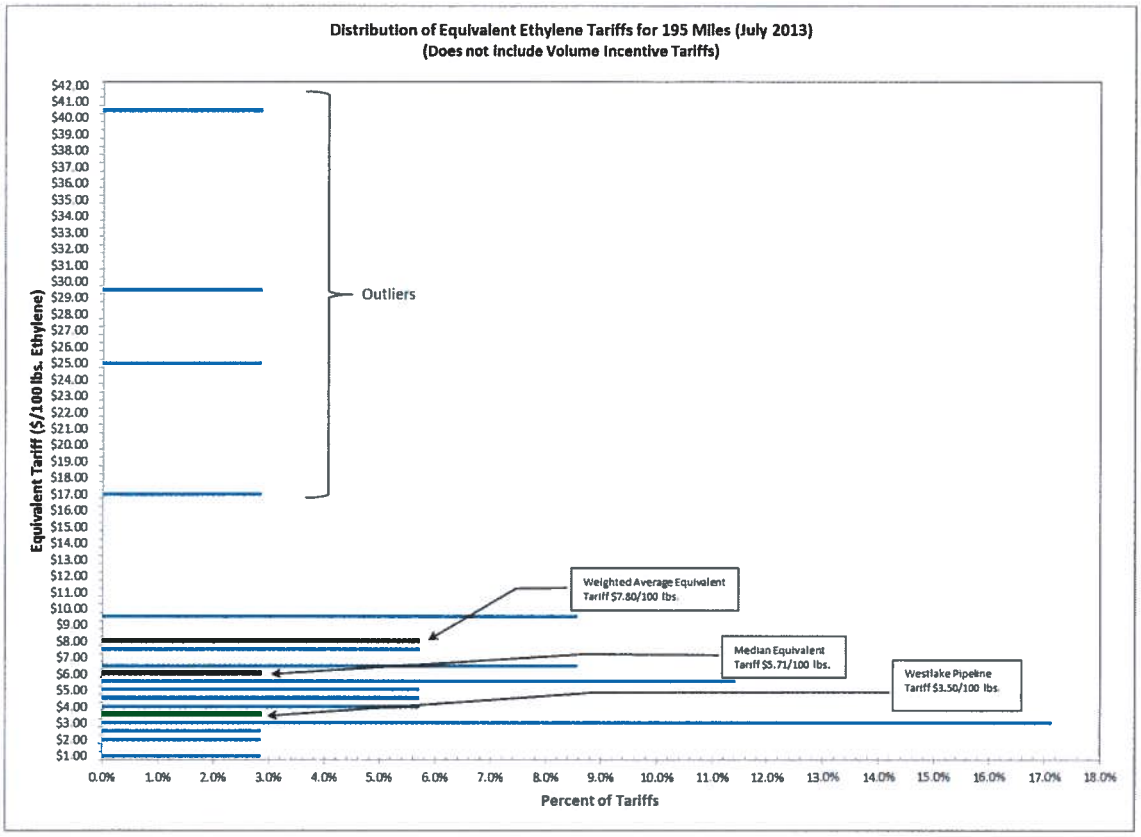
[59] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 20 and DBL Exh. 8.
[60] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 8.
[61] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 23 and DBL Exh. 12.
[62] *Id.*
[63] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 23.
[64] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, pp. 20-21.
[65] Remand Transcript of Testimony, Vol. II, David B. Lerman, p. 56.
[66] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 33.
[67] Remand Transcript of Testimony, Vol. II, David B. Lerman, p. 84.

**Figure 6.2**
**Distribution of Equivalent Ethylene Tariffs for 195 Miles Without Incentive Rates in July 2013**[68]

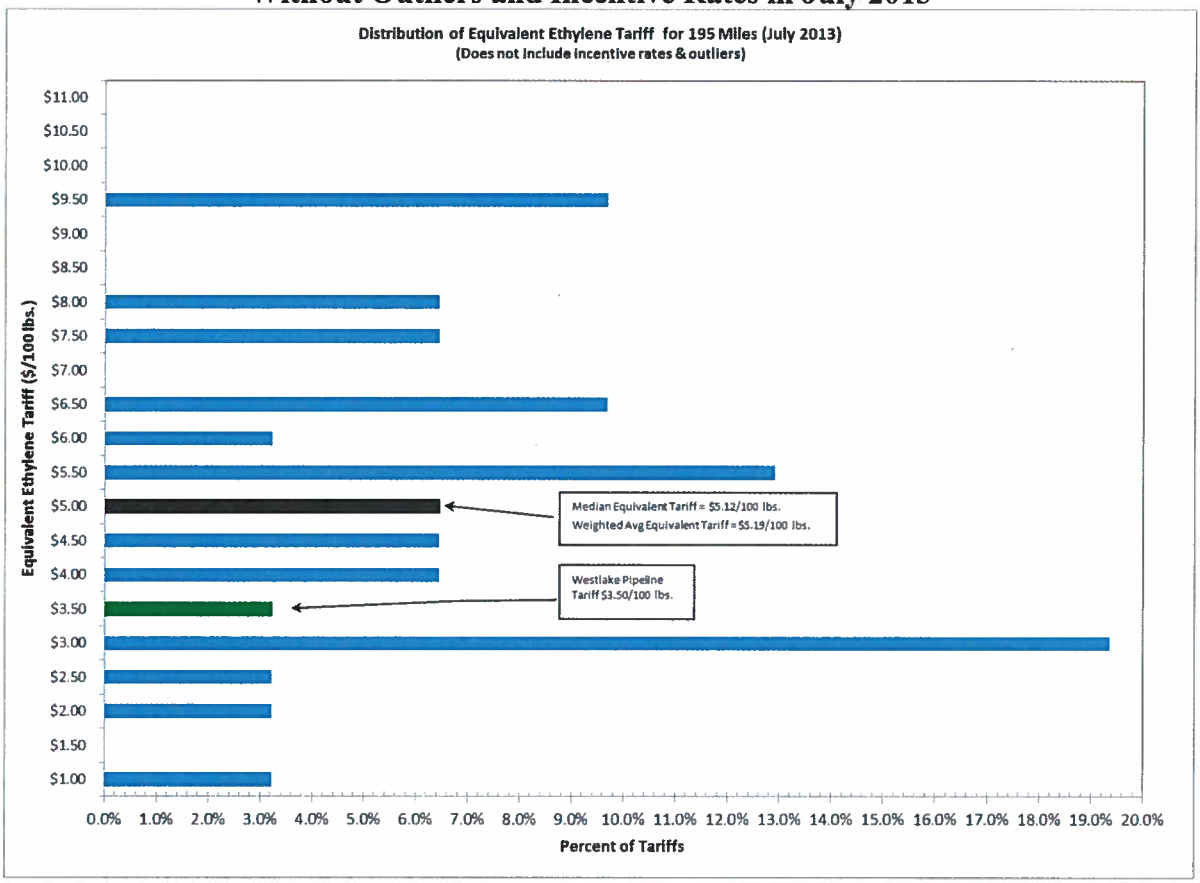



Mr. Lerman identified four tariffs as outliers, as seen on Figure 6.2 above, because "they are an order of magnitude higher than Westlake Pipeline's proposed $3.50 per 100 pounds ethylene tariff rate in July 2013."[69] These outliers result in a distance scaled rate of greater than $16.00 per 100 pounds of ethylene transported.

[68] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, Exh. 28.
[69] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 33 and Remand Transcript of Testimony, Vol. II, David B. Lerman, p. 142.

Next, as seen in Figure 6.3 below, Mr. Lerman adjusts his analysis by eliminating those outliers.

**Figure 6.3**
**Distribution of Ethylene Pipeline Tariff Rates**
**Without Outliers and Incentive Rates in July 2013**[70]




Mr. Lerman testified that the difference between the weighted average and the median tariff rate is much smaller without the outliers. Both measures of central tendency are higher by more than $1.50/100 lbs./195 miles than Westlake Pipeline's proposed $3.50/100 lbs/195 miles. Approximately 32% of the equivalent tariff rates are $3.50/100 lbs. ethylene or less.[71]

The underlying data that Mr. Lerman used for his 2013 analyses is provided at "Appendix 3" to this Remand Proposal for Decision. The "Appendix 3" Table shows the six tariffs for 2013 with their related origin and destination points, the distance of each haul, and Mr. Lerman's distance adjusted conversion rates.[72]

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[70] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, Exh. 29.
[71] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 34.
[72] The "Appendix 3" Table is from Electronic Workpapers related to Westlake Exh. 201, Remand Direct Testimony of David B. Lerman, Exh. 6, Tab – July 2013 Rates. The "Appendix 3" Table omits columns in the Workpapers related to columns with sequential numbering and the associated 50-cent bin.

Mr. Lerman also performed this same methodology on these same tariffs as their rates changed over time. Thus, he repeated a similar analysis for the tariffs in effect as of July 2014 on the same pipelines.[73] In his opinion, the 2014 results show the same relationship between distance and pipeline tariff charges as the 2013 tariff comparisons.[74] In 2014, the weighted-average ethylene pipeline rate is $5.42 and the median rate is $5.32.[75]

Mr. Lerman also reviewed tariffs of NGL pipelines in the Gulf Coast area. Mr. Lerman concludes, however, that NGL pipelines are not direct competitors or substitutes for ethylene, so the analysis of the tariff rates charged to transport NGLs was limited to provide only insight into the pipeline transportation market and not as a comparison of transportation rates.[76] Mr. Lerman concluded that the results of his analysis show that the rate is explained by distance of the pipeline.[77]

### (2) Regression Analyses

Regression analysis is a statistical method used to estimate the relationship among variables. The purpose of the analysis is to explain how the value of the dependent variable changes when one of the independent variables is changed. Mr. Lerman testified that distance matters[78] in setting a pipeline rate and while other factors contribute to the determination of a tariff rate, identifying these other factors and understanding how these other factors contribute to the determination of any tariff rate is very difficult in using a market-based rate approach.[79]

Mr. Lerman conducted several regression analyses to support his argument that distance is the major variable in determining the rate for ethylene pipelines.[80] He concludes that the distance of an ethylene pipeline explains approximately 73% of the variation in price to transport ethylene.[81] Mr. Lerman testified that he conducted two regression analyses on what he believes to be similarly situated ethylene pipelines and one regression analysis on natural gas pipelines.[82] In rebuttal, Mr. Lerman testified further that he also replicated two of Dr. Fairchild's regression analyses. Mr. Lerman then supplemented his original regression analyses to include an additional ethylene pipeline tariff from 2015 (Boardwalk Petrochemical Pipeline, LLC) to produce regression equations predicting ethylene transportation rates exceeding the requested $3.50 per 100 pounds.[83]

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[73] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, 22-23 and Exhs.11 and 13.
[74] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, 22-23 and Exhs.11 and 13; and Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, pp. 34-35.
[75] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, pp. 34-35 and Exhs. DBL 30 and 31.
[76] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, pp. 2-3.
[77] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 28 and DBL Exh. 20.
[78] Remand Transcript of Testimony, Vol. II, David B. Lerman, p. 138 and Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 24.
[79] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 24.
[80] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, pp. 19-23.
[81] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 23; and Westlake Ex. 202, Remand Rebuttal Testimony of David B. Lerman, pp. 17 and 29-30.
[82] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exhs. 12, 13 and 20.
[83] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, DBL Exhs. R-1, R-2, R-3 and R-4; and Westlake Exh. 203.

### (a) Regression No. 1

Mr. Lerman conducted his first regression analysis on the data points of pipeline distance (miles) and rate ($/100-lbs) for the ethylene pipeline tariff rates effective in July 2013 to provide quantifiable evidence to support his argument that distance is the major variable in determining the rate.[84] In his methodology, he excluded any incentive tariff rates, any pipelines 75 miles or longer and two Concha tariffs that have rates of $3.50 and $3.49 for a distance of 23 and 27 miles respectively.[85] Mr. Lerman explains that the $R^2$ of the regression line is 0.739, which means the regression line explains 73.9% of the variation between the tariff rate and distance.[86] Mr. Lerman acknowledges that the relationship between distance and tariff rate is not perfect and that other factors in addition to distance explain approximately 30% of the variation in the tariff rates.[87]

### (b) Regression No. 2

The second regression analysis is similar to the first but includes the rates effective in July 2014 and is used to support the results from his first regression.[88] Mr. Lerman explains that the $R^2$ of the regression line is 0.737, which means the regression line explains 73.7% of the variation between the tariff rate and distance.[89]

### (c) Regression No. 3

The third analysis used by Mr. Lerman to support his hypothesis that distance is highly correlated to the rate is a regression on the data points of natural gas pipeline distance (miles) and rate (Bbl.) for the natural gas gulf coast pipelines less than 300 miles. He explains that he excludes distances of 300 miles or greater because extremely long transportation distances are not similar to the 195-miles distance of the Pipeline.[90] Ultimately, he concludes that the $R^2$ of the regression line explains 62.04% of the variation between the tariff rate and distance with the incentive rates excluded.[91]

### (d) Regression Nos. 4 and 5

In rebuttal, Mr. Lerman used the same data points as the first and second regressions from his Direct Testimony except that he also included the tariffed rate and ethylene pipeline distance from the Boardwalk Tariff for the Evangeline Pipeline, which was introduced into the case by Eastman witnesses.[92] The final two regression analyses[93]produced regression equations predicting rates exceeding the proposed $3.50/100-lbs.

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[84] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 12.
[85] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 23, and DBL Exh. 12.
[86] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, and DBL Exh. 12.
[87] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 23.
[88] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 23.
[89] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 13.
[90] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 24.
[91] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 20.
[92] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, pp. 21 – 22; and Westlake Exh. 203.
[93] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, Exhs. DBL-3 and DBL-R4.

In the fourth regression,[94] Mr. Lerman supplemented his 2013 data points of pipeline distance (miles) and rate ($/100-lbs) with the data points from the 2015 Boardwalk Tariff and concluded that the $R^2$ is 0.731, which is slightly lower than the original 0.739 from the first regression in his Direct Testimony.[95] When the incentive rates are included, this results in an $R^2$ of 0.727.[96] Similarly, in the fifth regression,[97] Mr. Lerman supplemented his 2014 data points of pipeline distance (miles) and rate ($/100-lbs) with the data points form the 2015 Boardwalk Tariff and concluded that the $R^2$ is 0.726, which is slightly lower than the original 0.737 from his Direct Testimony.[98] When Mr. Lerman included the incentive rates the results were an $R^2$ of 0.723.[99]

### (3) Westlake's Conclusion

In conclusion, Westlake argues that distance is the most relevant factor for setting an ethylene pipeline transportation rate. According to Westlake, Mr. Lerman's regression analyses demonstrate that the proposed $3.50 per 100 pounds of ethylene transported rate is comparable to, or lower than, the weighted average and median rate for transporting ethylene 195 miles by pipeline in the Gulf Coast common carrier market. Westlake points out that Mr. Lerman did not limit his analyses to the South Tex 66 pipeline as Eastman had shown in its 2004 "Eastman Method" document. Instead, Mr. Lerman studied multiple rates from six different tariffs. After removing incentive rates and outliers, Mr. Lerman determined that, for tariffs in effect in July 2013, when Westlake revised its tariff rates, the weighted average tariff rate for Gulf Coast common carrier ethylene pipelines is $5.19/100 lbs/195 miles, and the median tariff rate is $5.12/100 lbs/195 miles.[100] Similarly, for tariffs in effect in July 2014, which is close in proximity to the first hearing in this proceeding, the weighted average tariff rate for Gulf Coast common carrier ethylene pipelines had risen to $5.42/100 lbs/195 miles, and the median tariff rate has increased to $5.32/100 lbs/195 miles.[101]

## B. Eastman's Position Regarding Westlake's Tariff Comparisons

In regard to the six tariffs forming the basis of Westlake's analysis, Eastman points out that Westlake has not used the actual rates charged by those other pipelines pursuant to their tariffs. Eastman asserts that Westlake has instead created and used a mileage-based rate with a weighted average and median rate over 40% greater than the highest rate actually charged by any of the other six ethylene pipelines, including hauls longer than 195 miles.[102] Eastman objects to setting a distance scaled mileage-based rate in an industry which has not been shown to have a single mileage-based tariff. On the other hand, if the Commission determines that it is reasonable to set a rate based on other tariffs, Eastman maintains that the Commission should use the actual tariff rates, not a derived number as proposed by Westlake. Eastman witness, Dr.

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[94] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, Exh. DBL-R3.
[95] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, p. 22.
[96] *Id.*
[97] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, Exh. DBL-R4.
[98] Westlake Exh. 202, Remand Rebuttal Testimony of David B. Lerman, p. 23.
[99] *Id.*
[100] Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 34.
[101] Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 35.
[102] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 26.

Fairchild showed that if the actual tariff rates are used, a reasonable transportation rate for the Westlake Pipeline is between $1.67 and $2.12 per hundred pounds.[103]

### (1) Distance Scaled Tariff Rates

Eastman opposes Mr. Lerman's method of "scaling" the actual tariff rates of other pipelines on the sole basis of distance of the haul because Eastman believes that those tariffs rates are not driven by the distance of the haul. For example, in the Concha tariffs, spanning from 2009 through 2014, the rate for the haul is substantially the same regardless of the distance, which is known as a "postage stamp rate" (i.e., the cost to mail a letter across town is the same as the cost to mail a letter across the country).[104] According to Dr. Fairchild, the only distinction in the rate for the different origin and destination points in the Concha tariffs relate to the direction of the flow rather than the distance.[105]

Similarly, in the Enterprise TE tariff, the pipeline offers a variety of hauls spanning from approximately 8 miles to approximately 57 miles, each with the exact same rate except for the incentive rates excluded by Mr. Lerman.[106] Again, the ExxonMobil Pipeline tariff is also a postage stamp tariff, with the rate for each of the four available hauls being $0.20 per 100 pounds of ethylene transported, regardless of the distance of the haul.[107] Of the other three pipeline tariffs utilized in Mr. Lerman's analysis, the Chevron Phillips and Koch pipelines have only one distance of haul available. Eastman argues that Mr. Lerman's analysis actually shows that pipelines tend to set postage stamp rates and that those rates do not vary based on the distance of hauls available on those pipelines.[108]

Since Mr. Lerman distance scales each of the six tariff's in his analyses, to arrive at a rate that no pipeline is actually charging, Eastman argues that Mr. Lerman's analysis cannot be said to yield a "market-based" rate. As a result, Eastman maintains that Dr. Fairchild's testimony is the only evidence of the median and average rates that are actually shown on the tariffs of the other pipelines for the transportation of ethylene.[109] Dr. Fairchild concludes, as shown in the Figure 6.4 below that the actual median and average tariff rates for 2013 are $1.69 and $2.12 per hundred, respectively. Eastman points out that these tariff rate ranges are consistent with Dr. Fairchild's recommended rate in the first phase of the hearing of $1.86 per hundred or $2.00 per hundred, if a separate rate for exchanges is set.[110]

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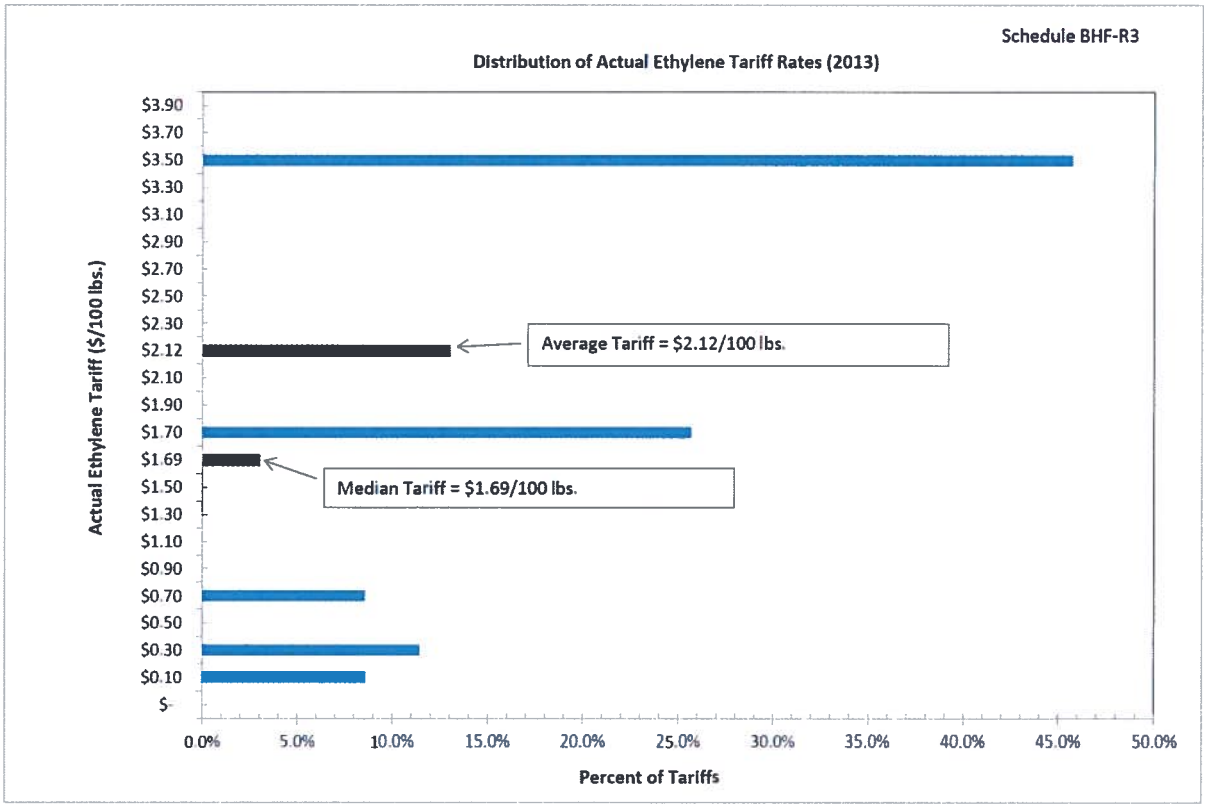
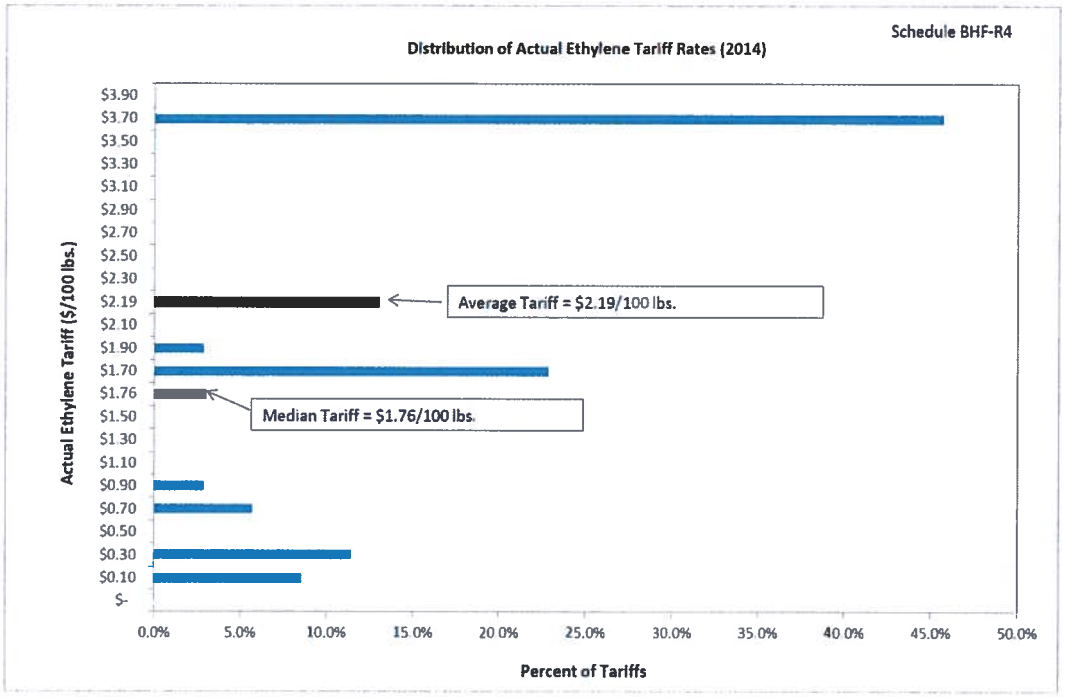
[103] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 27.
[104] Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 8.
[105] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 21.
[106] Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 9.
[107] Westlake Exhs. 64 and Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 6.
[108] Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 10.
[109] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, Schedules BHF-R3 and BHF-R4.
[110] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 37.

**Figure 6.4**
**Distribution of 2013 Actual Tariff Rates**



Similarly, for 2014 the actual median and average tariff rates are $1.76 and $2.19 per hundred, respectively, as shown in Figure 6.5 below.

**Figure 6.5**
**Distribution of 2014 Actual Tariff Rates**




What is more, Eastman's expert witness, James Watson, identified an additional 2015 ethylene tariff for the Boardwalk Petrochemical Pipeline LLC (formerly known as the Evangeline Pipeline) that extends from east of Baton Rouge, Louisiana to Port Neches, Texas.[111] Dr. Fairchild testified that the Boardwalk tariff contains only two rates. The first rate is a postage stamp rate of $1.403 for a variety of hauls, including those with transportation distances of 1 mile, 21 miles, 169 miles, and 186 miles. Also, it has a rate of $1.87 for particular 169 mile and 186 mile hauls relating to deliveries to ExxonMobil's ethylene product distribution system near Baton Rouge.

As with the other six tariffs, Eastman argues that the Boardwalk Pipeline rates are also not driven by the distance that the ethylene is transported. Furthermore, Eastman points out that the Evangeline Pipeline is closer in length to the Westlake Pipeline than any of the six other ethylene pipelines. Dr. Fairchild testified that if the Evangeline Pipeline's actual tariff rates are included in the distributions, the median and average actual tariff rates for 2013 fall to $1.67 and $1.95 per hundred, respectively, and for 2014, they drop to $1.67 and $2.02 per hundred, respectively.[112]

[111] Westlake Exh. 203.
[112] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p.27 and Schedule BHF-R-5.

## Table 6.2
## Boardwalk Petrochemical Pipeline, LLC 2015 Tariff[113]
## (Formerly Known as Evangeline Pipeline)

**BOARDWALK PETROCHEMICAL PIPELINE, LLC**

| Ethylene Pipeline | Receipt Point | Delivery Point | Miles | Rate/100 Lbs |
|---|---|---|---|---|
| Evangeline Pipeline | Port Neches, TX -- Enterprise | Orange, TX -- ExxonMobil | 21 | $ 1.4030 |
| | | Orange, TX -- Chevron | 21 | $ 1.4030 |
| | | Baton Rouge, LA -- Exxon Mobile | 186 | $ 1.8700 |
| | | Baton Rouge -- Boardwalk Louisiana | 186 | $ 1.4030 |
| | Port Neches, TX -- Koch | Orange, TX -- ExxonMobil | 21 | $ 1.4030 |
| | | Baton Rouge, LA -- Exxon Mobile | 186 | $ 1.8700 |
| | | Baton Rouge -- Boardwalk Louisiana | 186 | $ 1.4030 |
| | Orange, TX -- ExxonMobil | Orange, TX -- Chevron | 1 | $ 1.4030 |
| | | Baton Rouge, LA -- Exxon Mobile | 169 | $ 1.8700 |
| | | Baton Rouge -- Boardwalk Louisiana | 169 | $ 1.4030 |
| | Orange TX -- Chevron | Orange, TX -- ExxonMobil | 1 | $ 1.4030 |
| | | Baton Rouge, LA -- Exxon Mobile | 169 | $ 1.8700 |
| | | Baton Rouge -- Boardwalk Louisiana | 169 | $ 1.4030 |

Moreover, Eastman believes that Mr. Lerman's failure to initially identify and factor in this relevant Boardwalk tariff, appears to show a lack of experience in Mr. Lerman's review of pipeline rates. Dr. Fairchild believes that a comparison of actual tariff rates shows that distance of the haul explains very little about the rates charged.[114] In contrast, Dr. Fairchild testified that there are economies of scale, such as fixed administrative and general costs, by operating a longer pipeline like the Westlake Pipeline versus a shorter one.[115] Dr. Fairchild believes that linearly extrapolating the tariff rates of pipelines that are less than one-third of the length of the Westlake Pipeline overstates what Westlake calls an equivalent rate.[116] Dr. Fairchild testified that many of Mr. Lerman's numbers are outrageously high, so Mr. Lerman calls them "outliers."[117] Eastman argues that the $17 - $40 averages labeled as "outliers" demonstrate that Mr. Lerman's methodology is flawed.

Dr. Fairchild maintains that Mr. Lerman failed to use any factor other than distance to calculate his alleged equivalent rates even though other parameters were requested prior to the remand hearing. Those factors included age, volumes, type of contract, firm versus interruptible service, and pipeline diameter. Eastman also points out that Westlake's argument that the length of a pipeline is related to the investment in operating costs is contrary to their argument that differences such as age, cost-of-service, original cost and throughput are irrelevant and should not be considered in setting a market-based rate presented above in Section 5, for "Similarly Situated" Shippers.[118]

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[113] Westlake Exh. 203.
[114] Westlake Exh. 203.
[115] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 22.
[116] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 22.
[117] Remand Transcript of Testimony, Vol. I, Bruce H. Fairchild, p. 68.
[118] Westlake Initial Brief on Remand, p. 10.

### (2) Regression Analyses

Dr. Fairchild testified that Mr. Lerman's exclusion of the Concha tariff "exceptions" from Mr. Lerman's regression analysis makes a significant difference in the results.[119] Dr. Fairchild testified further that if the two Concha hauls are not excluded, the R-squared statistic decreases from approximately 0.74 to approximately 0.44. According to Dr. Fairchild, this means that instead of over 70% of the variation in tariff rates being explained by distance, then length of haul actually explains less than 45% of the variation in tariff rates.[120]

Moreover, if all of the 2013 and 2014 tariff rates are included in the regression analyses, the R-squared of the regression equations fall to approximately 0.58, meaning that distance explains only a little more than one-half of the variation in tariff rates. Similarly, by limiting the regression analyses to hauls of less than 75 miles, Mr. Lerman excludes one-third of the tariff rates that he subsequently relies on to support Westlake's proposed rate. Dr. Fairchild concludes that when Mr. Lerman's "exceptions" are not excluded and/or all of the tariff rates are included in the analyses, the relatively weak explanatory power of distance in the regression equations does not support a linear scaling of the tariff rates of other pipelines to account for differences in the lengths of hauls.[121]

### (3) Alternative Method Recommended by Eastman

Eastman does not agree that Westlake has established the reasonableness of its proposed $3.50 per 100 pounds of ethylene transported through the evidence presented related to distance scaled tariff comparisons. In the alternative, Eastman argues that the Commission may use a negotiated rate process to set rates for the same or similar service. Eastman asserts that this negotiated rate on the Westlake Pipeline for both physical transportation and for exchanges has already been established by Westlake Chemical Corporation, the pipeline's parent company, and Eastman in the Ethylene Sales Agreement (ESA).[122] Pursuant to the agreement, Eastman pays approximately $0.96 per hundred pounds for physical quantities of ethylene transported over the Westlake Pipeline. The agreement also provides that exchanges are performed at no cost.[123] Eastman maintains that although the ESA is part of a larger agreement, it is an example of an arm's-length transaction of rates that are not mathematically manipulated.

Eastman believes that using this already negotiated rate as a market-based rate is consistent with general market-based concepts. Eastman refers to the Commission's jurisdiction in a natural gas setting, Section 104.003(b)(1)-(3)[124] of the Utilities Code, requiring neither party to have an unfair advantage during the negotiations. According to Eastman, the only evidence of an actual negotiated rate for transportation on the Westlake Pipeline in an arm's-length

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[119] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 20.
[120] *Id.*
[121] *Id.*
[122] Eastman Exh. 101A, Direct Testimony of J. Stephen Long, Exh. JSL-7.
[123] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, pp. 36-37.
[124] Tex. Util. Code Ann. §104.003(b)(1) neither the gas utility nor the customer had an unfair advantage during the negotiations; (2) the rate is substantially the same as the rate between the gas utility and at least two of those customers under the same or similar conditions of service; or (3) competition does or did exist with another gas utility, another supplier of natural gas, or a supplier of an alternative form of energy.

bargaining between persons of equal bargaining power is contained in the Ethylene Sales Agreement between Eastman and Westlake Chemical Corporation.[125]

### (4) Eastman's Conclusions

Eastman argues that Westlake, as the proponent of a new and higher rate for the pipeline, has the burden of demonstrating that a market-based rate for the Westlake Pipeline may be established, whether from the rates charged by others in the industry or by other credible evidence. Eastman maintains that Westlake has failed to meet its burden because Westlake has only resubmitted the same information it presented in the first hearing, a set of six tariffs from other ethylene pipelines.[126] Eastman argues that Mr. Lerman's methodology is only a slight variation from Westlake's first rate expert, Dr. Arthur. Eastman argues further that the Commissioners requested additional information, but Westlake has provided the same information available to them at the time the case was remanded.[127] As a result, Eastman concludes that the evidence supports only two bases for setting a market-based rate: (1) consideration of rates that have been negotiated for the same or similar service; or (2) a comparison of the rates that are actually being charged by similarly-situated pipelines.

## C. Recommendation of ALJ and Technical Examiner Regarding Methodology of Tariff Comparisons

First, the ALJ and Technical Examiner question whether it is appropriate to consider using the "Eastman Method" as the rate-setting methodology for the Commission to adopt as precedential value to all future pipeline transportation rate cases. It appears that this Eastman standard operating procedure document may have been used to set rates, although this document's application to the rates in the 2002 Tariff is unknown since the standard operating procedure document is dated later in 2004.

Secondly, Mr. Lerman's regression analyses may show that "distance matters" but between the two expert witnesses' results, the evidence is inconclusive as to what degree "distance matters." On the one hand, Mr. Lerman believes the regression analyses prove that distance matters up to as much as 80.5%; however, Dr. Fairchild shows it may be as little as 44%.

Moreover, the distance scaled rates produce rates that are unrealistic as they result in an average and median rate over 40% greater than the highest rate actually charged by any of the other six ethylene pipelines, including for hauls longer than 195 miles. Certain concerns relate to the selection of the data for both the distance scaled tariff rates, as well as, the regression analyses. Of the six tariffs selected, only the Concha Chemical Pipeline has distances greater than 57 miles. Mr. Lerman conducted analysis with data for distances up to 75 miles.[128] Little justification was provided as to limiting the analysis to tariffs 75 miles or less.

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[125] Eastman Exh. 101A, Direct Testimony of J. Stephen Long, Exh. JSL-7.
[126] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 14.
[127] Referring to Exhibit D to the original PFD, showing the then-prevailing rates for the six pipelines divided by the mileage associated with each haul and multiplied by 195 miles.
[128] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 23, and Exh. DBL-12.

Likewise, in the Concha Pipeline tariff, some of Mr. Lerman's distance scaled rates are approximately $6 to $9 per hundred pounds when the actual tariff rate is $3.49 per hundred pounds. No explanation is provided as to why it is reasonable to leave these distance scaled rates in his analysis while removing the "outliers" that range from approximately $16 to $40. The same methodology produced the "outliers" as did the double and triple distance scaled rates. Mr. Lerman should select his criteria for excluding outliers prior to running the analysis, not afterwards in what appears to be a selection of removing undesired results.

As for the Concha "exceptions," the only basis for excluding those rates were that they were the same price for a short haul as a long haul for the two relatively short distances of 27 miles with a rate of $3.49 per 100 pounds and 23 miles with a rate of $3.50 per 100 pounds.[129] Mr. Lerman failed to provide adequate justification for excluding these as exceptions. While they produce rates that are too high, the greater likelihood for his exclusion of these two tariff rates is that if they were included in the analysis, they would lower the correlation between distance and price in the regression analysis.

Furthermore, Mr. Lerman excluded the Enterprise TE Products Pipeline Company LLC incentive tariffs. Again, the justification for excluding the incentives was inadequate. The rate differential between the incentives is high at approximately $1.59. Whereas, the 20 year commitment and minimum volume requirement shippers pay only 7.7 cents per hundred pounds and non-commitment shippers pay $1.67 per hundred pounds. There is no other tariff in the case that has commitment versus non-commitment shippers. Even by removing the incentives, it is inappropriate to compare this rate structure with the other tariffs. It would be more appropriate to exclude the entire Enterprise TE Products Pipeline as a whole not just the incentive part of the tariff.

A close review of Appendix 3 and the six 2013 tariffs used by Mr. Lerman, lend credibility to Eastman's argument that the tariffs actually show that pipelines tend to set postage stamp rates and that those rates do not vary based on the distance of hauls available on those pipelines.[130] Ultimately, Mr. Lerman failed to provide credible evidence that distance is the primary variable. Consequently, the ALJ and Technical Examiner do not recommend scaling the tariffs when it is uncertain as to the degree that distance drives the tariff rate. In each of these six tariffs, there are items that are unaccounted for because other factors besides distance affect tariff rates. Also, there is a huge disparity in the length of the Westlake Pipeline relative to the other pipelines in his analyses. It follows that, Westlake failed to establish the credibility of Mr. Lerman's results that the weighted average rate charged to transport ethylene 195 miles in the Gulf Coast market is $5.19 per 100 pounds.

The ALJ and Technical Examiner concur with Dr. Fairchild that Mr. Lerman compares to Westlake Pipeline's proposed rate what other pipelines are charging for the transportation of ethylene, yet not a single one of the alleged equivalent rates that Mr. Lerman includes in the distribution of rates is an actual tariff rate charged by any of the other six pipelines to transport ethylene.[131] Since Mr. Lerman distance scales each of the six tariff's in his analyses, to arrive at

[129] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, p. 20, and Exh. DBL-8.
[130] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, Exh. DBL-10.
[131] Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, Exhs. DBL-29 and DBL-31.

a rate that no pipeline is actually charging, Mr. Lerman's analyses does not yield a "market-based" rate. The only analyses of the median and average rates that the other pipelines are actually charging for the transportation of ethylene are those performed by Dr. Fairchild. If not distance scaled, the 2013 median and average rates actually charged in the market to transport ethylene is between $1.69 and $2.12 per hundred pounds.[132]

In regard to the Boardwalk Pipeline tariff introduced into evidence, it is the opinion of the ALJ and Technical Examiner that it is not appropriate to base a determination on this tariff, because the tariff was not effective until 2015. In other words, it is not an appropriate basis to determine whether Westlake's proposed $3.50 rate was reasonable in July 2013 when it was proposed. Conversely, Boardwalk's $1.40 and $1.87 per hundred pound rates may be reviewed for the limited purpose to what is currently happening in the market with a pipeline with hauls running from one mile to 186 miles, which is similar to the distance of the Westlake Pipeline that runs 195 miles.

The ALJ and Technical Examiner find that the NGL tariffs are not relevant to this ethylene transportation rate proceeding.

## D. Alternative Means of Transportation

The second element of the "Eastman Method" that Westlake argues the Commission should utilize to set the rate for the Westlake Pipeline is a comparison of the rates for alternative forms of ethylene transportation. The evidence in this case shows that approximately 1.4 billion pounds of ethylene is produced per year by Eastman at Longview.[133] Eastman uses approximately 600 million pounds per year of this ethylene in Longview.[134] Eastman, therefore, has approximately 800 million pounds per year remaining. Currently, 600 million to 700 million pounds per year is consumed by other parties in Longview.[135] This leaves approximately 100 million to 200 million pounds per year to transport from Longview. Mr. Watson testified that this amount is over the amount that Eastman currently transports by truck each year as Eastman moves out of Longview by truck and rail each year between 60 million to 90 million pounds of ethylene per year.[136]

### (1) Eastman's Position Related to Alternative Means of Transportation

Eastman disagrees with Westlake's attempt to diminish the importance of the Westlake Pipeline to Eastman by suggesting that the gaseous form of ethylene that it normally ships on the pipeline can just as easily be shipped as liquid ethylene by truck or rail. James L. Watson, Managing Partner and Owner, of Pearson, Watson, Millican, and Company, testified on behalf of Eastman that the ethylene that is shipped via the Pipeline is in gaseous form and at ambient temperatures. He added that this gaseous form of ethylene is distinct from the ethylene shipped

[132] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 26 and Schedules BHF-R3 and BHF-R4.
[133] Remand Transcript of Testimony, Vol. I, James L. Watson, pp. 132-133.
[134] *Id.*
[135] *Id.*
[136] Remand Transcript of Testimony, Vol. I, James L. Watson, pp. 133-137.

via truck and rail, which is in liquid form.[137] Eastman argues that the trucking and rail services are used to transport small quantities of a substantively different product and these transportation modes are not competitive alternatives to shipping on the pipeline.

Mr. Watson testified that liquid ethylene transported via truck or rail is a completely separate market from gaseous ethylene.[138] When ethylene is transported via truck or rail, it is transported in liquid form and only in small quantities. This is different than pipeline ethylene, which is transported in gaseous form by the millions of pounds.[139] Liquid ethylene is used in a variety of specialized applications, whereas gaseous ethylene is used primarily for the production of polyethylene.[140] Eastman asserts that Mr. Watson's testimony is consistent with the record already established in this case by Eastman witness Mark Bogle's Rebuttal testimony in GUD 10296.[141] Both Mr. Watson and Mr. Bogle discussed the limited market for liquid ethylene.[142] Mr. Bogle stated that the market for liquid ethylene is so limited, that it makes up only 0.045 percent of the North American ethylene market. Only a very small portion of the ethylene produced by Eastman in Longview is delivered to customers in liquid form.

According to Mr. Watson, there are a number of significant challenges and costs with shipping ethylene via truck and rail, many of which stem from the extremely low temperatures required to maintain ethylene in liquid form.[143] In order to transport ethylene via truck or rail, it must be compressed into liquid using special equipment and cooled to minus 130-150F degrees.[144] Yet, pipeline ethylene is transported at ambient temperatures. Until the liquid ethylene is ready to ship, it must be stored in a cryogenic storage tank.[145] Eastman has only one of these tanks in Longview, with a capacity of only 35,000 gallons, or approximately 160,000 pounds.[146] The liquid ethylene must then be loaded onto specialized cryogenic containers for shipping.[147] On the other hand, gaseous ethylene may be stored in the millions of pounds.[148]

Mr. Watson testified further that once loaded onto trucks or rail cars, the transportation challenges continue because liquid ethylene has a limited handling time, which means that deliveries to customers must be made within days of being loaded.[149] Mr. Watson testified further that the fleet of cryogenic trucks capable of safely transporting liquid ethylene is limited to only several dozen trucks in the United States.[150] The customers receiving the liquid ethylene are also required to have special equipment to unload, store and use the liquid ethylene.[151] Eastman argues that most customers that receive pipeline ethylene are probably not equipped to

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[137] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, pp. 16-17.
[138] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 16.
[139] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, pp. 20-21.
[140] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 16.
[141] Tex. R.R. Comm'n., *Complaint Filed By Eastman Chemical Company Against Westlake Ethylene Corp., (Westlake Pipeline) Regarding Westlake Pipeline's System T-4 Permit No. 05253*, GUD No. 10296, Final Order (December 9, 2014).
[142] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 18 and Eastman Exh. 1, Direct Testimony of Mark Bogle, p. 6.
[143] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 19.
[144] *Id.*
[145] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 20.
[146] *Id.*
[147] *Id.*
[148] *Id.*
[149] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 22.
[150] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 24.
[151] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 23.

receive liquid ethylene. Mr. Watson estimated that the specialty equipment needed for storing, loading and unloading liquid ethylene can cost hundreds of thousands of dollars or more.[152] Eastman asserts that none of these considerations were taken into account by Mr. Lerman, who did not factor any of the challenges into his assertion that trucking and rail are suitable alternatives to the Westlake Pipeline. Eastman requests that the Commission conclude that the liquid ethylene market is not a competitive alternative and, therefore, is completely immaterial and irrelevant to setting a market-based tariff rate for the Westlake Pipeline.

Eastman points to the FERC as guidance on *competitive* alternatives to pipeline transportation. According to Eastman, the FERC, which began allowing market-based rate authority in 1994, has expressly recognized this principle in its policy guidance and in a number of cases.[153] An applicant seeking to establish market-based ratemaking authority must first establish that there is in fact competition in the relevant market, including both the product and geographic markets, and in the origin and destination markets.[154] "The fact that an alternative is located within the production field or within a certain proximity to the pipeline," explains the FERC, "does not alone establish that an alternative is a good alternative."[155] An alternative must be good in terms of both availability and price. A competitive alternative must have the ability "to discipline, or prevent, a potential increase in price above the competitive level by the pipeline applicant."[156] If the pipeline does increase its prices, a competitive alternative must be able to receive product diverted from the applicant and be of the same quality as the pipeline.[157] In other words, a transportation alternative is competitive only when a shipper could readily switch to that alternative if the pipeline increased its rates above a competitive level.

Eastman maintains that with the FERC's test for competitive alternatives, truck and rail transportation of ethylene would never qualify as alternatives to the Westlake Pipeline because ethylene that is trucked or shipped by rail is in liquid form and is shipped in very small quantities compared to pipeline ethylene shipped in large quantities in gaseous form. Thus, a pipeline shipper simply cannot switch to trucking or rail. Eastman believes that trucking and rail are not able to receive product diverted from pipeline transportation. Neither Eastman nor Westlake, the principal shippers on the Pipeline, could switch to truck or rail in order to obtain the millions of pounds of ethylene required in Longview and Mont Belvieu.

What is more, Eastman argues that the rates for shipping ethylene by truck or rail have no place in a market-based analysis for setting a pipeline rate because the Commission has previously determined that truck and rail are not competitive alternatives to pipeline transportation. Eastman points to GUD No. 10296, where the Commission found that nearly 800 million pounds of ethylene annually must either be sold in Longview or transported or exchanged at Mont Belvieu.[158] The Commission further found that "[o]ther than Eastman's own

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[152] *Id.*
[153] *Re Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61295, 62059 (May 30, 1989); *Enterprise TE Products Pipeline Co., LLC*, 146 FERC ¶ 61,157, Order on Rehearing.
[154] *Re Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61295.
[155] *Enterprise TE Products Pipeline Co., LLC*, 146 FERC ¶ at 61,497.
[156] *Id.*
[157] *Id.*
[158] *Complaint Filed by Eastman Chemical Company Against Westlake Ethylene Corp., (Westlake Pipeline) Regarding Westlake Pipeline's System T-4 Permit No. 05253,* GUD No. 10296, Final Order at FOF No. 17 (Dec. 9, 2014).

use, the only substantial market for ethylene in Longview is Westlake Longview."[159] Thus, in order for Eastman to have alternatives to selling ethylene to Westlake Longview, it must have adequate transportation between Longview and Mont Belvieu for millions of pounds of ethylene.

Finally, Dr. Fairchild maintains that liquid and gaseous ethylene markets are different and that it is not practical to ship large quantities of ethylene by truck.[160] He concludes that Eastman Chemical's costs of trucking liquid ethylene do not provide a meaningful benchmark for a fair and reasonable pipeline rate on the Westlake Pipeline."[161] Eastman believes that the evidence shows that truck and rail cannot be used to transport large amounts of ethylene between Longview and Mont Belvieu, the only relevant markets to the Westlake Pipeline.

### (2) Westlake's Response Regarding Alternative Means of Transportation

Contrary to the impression that Eastman witnesses state, a significant amount of ethylene needs to leave Longview each year and already does so by truck or rail. Westlake asserts that Dr. Fairchild's argument related to this issue is inconsistent. Westlake points to Dr. Fairchild's testimony stating that liquid and gaseous ethylene markets are different and it is not practical to ship large quantities of ethylene by truck. Yet, Eastman included ethylene trucking costs on a table entitled, "Mustang Pipeline Ethylene Tariff Benchmarks" and Westlake believes that Eastman used those benchmark trucking costs to set its $1.90 per 100 pound rate in the 2002 tariff for the pipeline when Eastman owned it.[162]

Similarly, Westlake maintains that Mr. Watson's testimony was flawed related to the number of trucks capable of handling liquid ethylene. On cross-examination, he was unable to answer the name of the company that transports ethylene by truck or how many trucks they have.[163] Also, Mr. Watson did not know how many railcars are available in the United States or in Texas to transport ethylene or information related to any ethylene storage facilities.[164]

Third, Westlake believes that Mr. Watson knowingly overstated the quantity of trucks needed to transport ethylene out of Longview. In his testimony, Mr. Watson calculated the number of trucks that would be required to move 800 million pounds of ethylene out of Longview annually. But on cross examination, he admitted that only 100 to 200 million pounds of ethylene need to leave Longview under normal operations.[165] He further acknowledged that the volumes of ethylene already leaving Longview by truck and rail each year has ranged between 60 and 90 million pounds.[166] Westlake points out that truck and rail transportation currently account for at least 30% of the ethylene transported. If this amount dropped to 100 million pounds, then it would account for as much as 90% of the ethylene leaving Longview

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[159] GUD No. 10296, Final Order at FOF No. 18 (Dec. 9, 2014).
[160] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 6.
[161] *Id.*
[162] Westlake Exh. 140 at Bates Label Eastman 01599.
[163] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 159.
[164] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, pp. 140-141, 160.
[165] *Id.* at 133 – 134.
[166] *Id.* at 134.

each year.[167] Finally, Mr. Lerman concludes that if trucking costs are considered, the cost would exceed $3.50 per hundred pounds.[168]

### (3) Recommendation of ALJ and Technical Examiner Related to Alternative Means of Transportation

In GUD No. 10296, the Commission found that nearly 800 million pounds of ethylene annually must either be sold in Longview or transported or exchanged at Mont Belvieu.[169] The Commission further found that "[o]ther than Eastman's own use, the only substantial market for ethylene in Longview is Westlake Longview."[170] Thus, in order for Eastman to have alternatives to selling ethylene to Westlake Longview, it must have adequate transportation between Longview and Mont Belvieu for millions of pounds of ethylene. In addition, it has previously been established in GUD 10296 that the market for liquid ethylene is so limited, that it makes up only 0.045 percent of the North American ethylene market.[171]

The ALJ and Technical Examiner find that the preponderance of the credible evidence demonstrates that the existing trucking and rail services used to transport smaller quantities of liquid ethylene are not competitive alternatives to shipping gaseous ethylene by the millions of pounds through the pipeline.[172] Liquid ethylene requires special handling and storage, which is only for a short duration. The evidence shows that ethylene transported via truck or rail is a completely separate market from gaseous ethylene.[173] Neither Eastman nor Westlake, the principal shippers on the Westlake Pipeline, could switch to truck or rail in order to obtain the millions of pounds of ethylene required in Longview and Mont Belvieu.

Of the approximately 800 million pounds per year of ethylene remaining from Eastman's production and use, currently, 600 million to 700 million pounds per year is consumed by other parties in Longview.[174] Currently, this leaves approximately 100 million to 200 million pounds per year to transport from Longview. This amount is larger than the volume that Eastman may currently transport by rail or truck each year, as Eastman currently transports approximately 60 million to 90 million pounds per year.[175] The ALJ and Technical Examiner find that ethylene shipped via truck or rail is not a competitive alternative to the Westlake Pipeline.

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[167] Remand Transcript of Testimony, Vol. I, James L. Watson pp. 133 – 137.
[168] Remand Transcript of Testimony, Vol. II, David B. Lerman, pp. 85 and 117.
[169] *Complaint Filed by Eastman Chemical Company Against Westlake Ethylene Corp., (Westlake Pipeline) Regarding Westlake Pipeline's System T-4 Permit No. 05253,* GUD No. 10296, Final Order at FOF No. 17 (Dec. 9, 2014).
[170] GUD No. 10296, Final Order at FOF No. 18 (Dec. 9, 2014).
[171] Tex. R.R. Comm'n., *Complaint Filed By Eastman Chemical Company Against Westlake Ethylene Corp., (Westlake Pipeline) Regarding Westlake Pipeline's System T-4 Permit No. 05253*, GUD No. 10296, Final Order (December 9, 2014); and Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 18 and Eastman Exh. 1, Direct Testimony of Mark Bogle, p. 6.
[172] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, pp. 20-21.
[173] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 16.
[174] *Id.*
[175] Remand Transcript of Testimony, Vol. I, James L. Watson, pp. 133-137.

## 7. Exchange Rates

### A. Eastman's Position

In addition to a rate for actual shipments on the Westlake Pipeline, Eastman requests that the Commission also set a rate for the exchange services provided by the Westlake Pipeline. Exchanges are a swap of products, as they do not involve any physical flow of ethylene. Mr. Watson testified that in an exchange for Eastman, the pipeline simply offsets ethylene delivered to Mont Belvieu with ethylene that is already in the pipeline at the Longview end.[176] Mr. Watson testified further that the pipeline incurs no or little cost for this transaction because there is no physical transportation of ethylene.[177] In this example, Westlake Chemical gets the ethylene at Longview that it wanted delivered to its facilities in Longview, while Eastman gets ethylene it needs in Mont Belvieu. The result of an exchange is that Eastman pays Westlake Pipeline the tariff rate for the exchange just as if Eastman molecules had been physically transported on the pipeline.[178]

Eastman notes that the Commission has concluded that Eastman requires exchange services on the pipeline. In Finding of Fact No. 55 in GUD No. 10296, the Commission found that "Eastman has demonstrated a demand for exchanges as Eastman has engaged in exchanges with Westlake Pipeline's affiliate, Westlake Longview since entering into the ESA."[179] The Commission further found that removal of exchange services from the tariff was discriminatory because it "provided an unreasonable preference and advantage to the [pipeline's] affiliate, Westlake Longview."[180]

It is Eastman's position that exchanges regularly occur on the Westlake Pipeline and in the market. Since February 2014, Eastman has required exchanges to get ethylene in Mont Belvieu. Mr. Watson testified that Eastman has been exchanging between one to four million pounds of ethylene per month from March 2014 through July 2015.

Eastman asserts that the testimony in this case shows that exchanges in this market should be priced lower than actual transportation because exchanges allow the pipeline to make additional revenue at no marginal cost. Mr. Watson testified that exchange rates have been actually negotiated in the industry. According to Eastman, a market-based rate from negotiated rates for exchanges would be between $0.25 and $0.50 per hundred pounds. Mr. Watson relied upon five commercial arrangements to develop his recommended market-based rate for this case.

First, Mr. Watson looked at the rate that Eastman and Westlake Longview have agreed to pay for exchanges under the ESA. Under the ESA, ethylene exchanges are performed at no charge.[181] Secondly, Mr. Watson looked at recent Eastman-Westlake Longview exchange of ethylene between Longview and Lake Charles, Louisiana that was a separate agreement and not

[176] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 8.
[177] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 9.
[178] Eastman Exh. 1, Direct Testimony of Mark Bogle, p. 12.
[179] GUD No. 10296, FOF No. 55 (Dec. 9, 2014).
[180] GUD No. 10296, FOF No. 84 (Dec. 9, 2014).
[181] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p. 9.

arranged through the ESA.[182] Under that agreement, Westlake Chemical charged Eastman $0.25 per hundred pounds for the exchange of ethylene. Thirdly, Mr. Watson used as a benchmark a recent agreement entered into by Eastman and another chemical company after Eastman sought competitive bids for the exchange of ethylene. The exchange rate from the bid that was awarded was $0.50 per hundred pounds.[183] Finally, Mr. Watson looked at two additional benchmarks for ethylene exchanges in Gulf Coast of $0.375 per hundred pounds and $0.75 per hundred pounds.[184]

Westlake has argued that it cannot perform exchanges because it does not own the molecules. Eastman responds that Westlake already has a history of performing exchanges and pipeline exchanges have been approved by the FERC at low or no cost. Eastman adds that the FERC has recognized the benefits of exchanges to pipelines because a pipeline uses product that is already in the pipeline to facilitate a swap at another point on the pipeline. A FERC case on point states, "These services can be provided without using fuel and without the incurrence of other variable costs."[185]

In conclusion, Eastman argues that given the fact that the Pipeline's parent company agreed to a rate of zero, the Commission should adopt the lower end of that range, or $0.25 per hundred pounds.

**B. Westlake's Position**

Westlake first argues that it is improper to set a separate, different exchange rate because there has never been a separate rate for exchanges on the pipeline. The first tariff for the pipeline did not allow for exchanges.[186] The second tariff, published by Eastman in 2002, set the exchange rate equal to the transportation rate, which is $1.90 per 100 pounds of ethylene for the first 320,000 pounds and $0.70 per hundred pounds for each additional amount exchanged in a single day.[187]

Secondly, Westlake asserts that requiring Westlake to provide exchange service at a lower rate than transportation service would amount to a regulatory taking. If Eastman is allowed to pay an exchange fee, then Eastman avoids paying the pipeline for physical transportation. According to Westlake, the avoided cost is the tariff rate for the transportation of ethylene. Westlake maintains that private parties may negotiate an exchange on their own, however, the pipeline should not be forced to facilitate an exchange for a party or be forced to accept a lower rate for a service. Westlake recognizes that the Commission has ordered Westlake Pipeline to provide exchange service, but Westlake argues that the pipeline should be allowed the same rate as transportation so that the Commission does not deprive the pipeline of transportation revenue that it could have otherwise realized.

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[182] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p.9 and Exh. JLW-7.
[183] Eastman Exh. 201A, Remand Direct Testimony of James L. Watson, p.10.
[184] Remand Transcript of Testimony, Vol. I, James L. Watson, pp. 156-157.
[185] *Midwestern Gas Transmission Corporation,* 50 FERC ¶ 61084 (1990) (Order Approving Settlement with Modifications), Jan. 26, 1990.
[186] Transcript of Testimony, May 6, 2014, Vol. I, Mark Bogle, p. 27.
[187] Westlake Exh. 2, p. 3.

Finally, the ESA between Westlake Longview and Eastman is part of a larger commercial transaction between unregulated parties and does not provide a basis for setting market-based rates on the common carrier pipeline, according to Westlake. Westlake argues that during Eastman's sale of the pipeline and polyethylene facilities to Westlake, that a number of agreements were put in place including the ESA. The ESA is part of a much larger transaction where either party may have negotiated for a lower transportation or exchange rate in return for some other benefit elsewhere in the multi-million dollar transaction. Westlake maintains that it makes sense that Eastman and Westlake Longview agreed to free exchanges under the ESA as those parties are avoiding the cost of paying Westlake Pipeline for the physical transportation, but Westlake Pipeline would never agree to a free exchange.

### C. Recommendation of ALJ and Technical Examiner Related to Exchanges

The ALJ and Technical Examiner concur with Westlake that it is improper to set a separate, different exchange rate on the pipeline. While the Commission has ordered Westlake Pipeline to provide exchange service, it is reasonable for Westlake Pipeline to be allowed the same rate for exchanges as the transportation rate. The ALJ and Technical Examiner concur with Westlake that if Eastman is allowed to pay an exchange fee, then Eastman avoids paying the pipeline the tariff rate for physical transportation. Private parties may negotiate an exchange on their own, however, the pipeline should not be required to facilitate an exchange at a lower rate for this service. It is the opinion of the ALJ and Technical Examiner that Westlake should be allowed the same rate as transportation so that it is not deprived of transportation revenue that it could have otherwise realized.

Similarly, there has never been a separate rate for exchanges on the pipeline. The first tariff for the pipeline did not allow for exchanges.[188] The second tariff, published by Eastman in 2002, set the exchange rate equal to the transportation rate, which is $1.90 per 100 pounds of ethylene for the first 320,000 pounds and $0.70 per hundred pounds for each additional amount exchanged in a single day.[189]

As for the ESA between Westlake Longview and Eastman, it is part of a larger commercial transaction between unregulated parties. Although sales agreements may provide guidance as to an arm-length transaction, this particular agreement suffers from the infirmity that it is part of a much larger transaction. The ALJ and Technical Examiner agree that Westlake's argument is strong that either party may have negotiated for a lower transportation or exchange rate in return for some other benefit elsewhere in the multi-million dollar transaction.

## 8. Recommendation of ALJ and Technical Examiner

The ALJ and Technical Examiner find that Westlake failed to meet its burden of proof to establish that its 2013 Tariff rate of $3.50 per hundred pounds of ethylene transported is just and reasonable. Since the ALJ and Technical Examiner have found that (1) the market is not competitive; (2) the preponderance of the credible evidence does not show that the six pipelines compared are substantially similar; (3) and the preponderance of the credible evidence does not

[188] Transcript of Testimony, May 6, 2014, Vol. I, Mark Bogle, p. 27.
[189] Westlake Exh. 2, p. 3.

demonstrate that distance is the primary driver for a pipeline rate, then the ALJ and Technical Examiner respectfully recommend the application of a cost-of-service based rate as presented in the original hearing, which recommended that a rate of $2.45 per hundred pounds of ethylene transported or exchanged is just and reasonable.

However, if the Commission determines that a market-based rate is appropriate in this proceeding, the ALJ and Technical Examiner respectfully recommend adopting the highest end of the average actual 2013 tariff rate, as presented by Dr. Fairchild, which is $2.12 per hundred pounds of ethylene transported or exchanged. This first alternative recommendation is shown in Tariff Table 8.1 below.[190]

Similarly, the ALJ and Technical Examiner recommend a second alternative market-based rate of $2.96 per hundred pounds transported or exchanged. Of the six pipeline tariffs used in Mr. Lerman's analyses, all are less than 58 miles in pipeline distance except for the Concha Pipeline. The Commission may determine that the pipelines with distances less than 58 miles are not substantially similar but the Concha Pipeline at 230 miles may be substantially similar. Thus, the Commission may consider making the following market-based findings: (1) the 230 mile Concha Pipeline is substantially similar to the Westlake Pipeline; (2) the Westlake Pipeline is part of the "Gulf Coast" market and it is a competitive market; and (3) distance is the major driver for a pipeline rate.

Assuming the Commission accepts the above three findings, the ALJ and Technical Examiner recommend that it is within the Commission's jurisdiction to rely upon all the evidence in the record to support a determination. Specifically, the Commission may consider using Mr. Lerman's methodology of distance scaling the rate but relying upon *only the Concha Pipeline tariff and the one Concha haul* that most closely resembles the 195 mile haul of the Westlake Pipeline. That is, the haul between Mont Belvieu and Napoleonville, Louisiana, which runs the entire 230 mile distance of the Concha Pipeline.[191] Mr. Lerman's distance scaled rate for that haul is $2.96.[192] To clarify, the Commission would be relying upon evidence and methodology in the record. The Commission, however, would be limiting the analysis to the one length of haul, which is Concha's entire pipeline distance. This process is distinguished by Mr. Lerman's analysis that included the intermediate points of Concha's shorter distances of Concha, except for the two Concha exceptions and two Concha outliers.

The ALJ and Technical Examiner further recommend that a return on investment or a rate of return are not relevant findings for a market-based rate. The ALJ and Technical Examiner concur with both Mr. Lerman and Dr. Fairchild on this issue. Mr. Lerman testified a market-based rate is not an asset-specific analysis so the capital investment and rate of return is provided for by the tariffs. Dr. Fairchild testified that the return on investment is a different approach to find a fair and reasonable rate.[193]

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[190] The original recommendation of a $2.45 rate is presented in Tariff Table 15.1 to the PFD issued on December 16, 2014.

[191] Refer to "Appendix 3" of this Commission Remand Proposal for Decision and Westlake Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 6.

[192] Divide Concha's rate of $3.49 by the pipeline distance of 230 miles, which equals $0.01527 per mile. Then, multiply the per mile rate by the Westlake's pipeline length of 195, which equals $2.96. *See* "Appendix 3" and Exh. 201A, Remand Direct Testimony of David B. Lerman, DBL Exh. 6.

[193] Transcript of Testimony, Vol. I, Bruce H. Fairchild, pp. 68-69.

Finally, the ALJ and Technical Examiner concur with Eastman that given Westlake's failure to provide the Commission with sufficient evidence regarding a substantially-similar pipeline for ethylene transportation, this case is not the best forum in which to set general precedent defining the scope of the Commission's market-based rate-setting authority. As Dr. Fairchild observed, this proceeding is focused solely on determining a fair and reasonable rate for an ethylene pipeline that is owned by one of the two chemical companies involved in this docket: "The interests represented by these shippers on the Westlake Pipeline and the information available in this docket do not compare to the breadth of interest and depth of information that could be provided by the larger community of pipeline owners, operators, and customers involved in more typical pipeline (e.g., NGL pipelines) operating in Texas."[194]

The ALJ and Technical Examiner concur with Eastman that given the limited interests represented in this proceeding and because of the scant evidence provided by Westlake to support its proposed rate, this proceeding may not be one in which the Commission should potentially set a general precedent that would be widely applicable to the Texas intrastate pipeline industry.

The recommendation of the ALJ and Technical Examiner impacts only Section II(b) of the tariff approved in GUD No. 10296. The ALJ and Technical Examiner have updated Section II(b) of the tariff, as shown below, to include the rate of $2.12 per 100 pounds for all volumes transported or exchanged, as recommended in this docket. The changes to Section II(b) are below. The ALJ and Technical Examiner also recommend that within 30 days of the date this Order is signed, Westlake Pipeline shall file the tariff with the Commission.[195]

[194] Eastman Exh. 200A, Remand Direct Testimony of Bruce H. Fairchild, p. 7.

[195] The tariff that the Examiners' recommend adopting is attached to this Proposal for Decision as "Exhibit B." This tariff includes the tariff adopted by the Commission on December 9, 2014, with the addition of the rate recommended in this docket shown in Table 15.1.

**Table 8.1**
Summary of Changes to Section II(b) - Rate
WESTLAKE ETHYLENE PIPELINE CORPORATION
T.R.R.C. No. _____
Mont Belvieu to Longview Pipeline

| Section | GUD No. 10296 Approved | ALJ and Technical Examiner Recommended |
|---|---|---|
| II. (b) Product Specifications and Local Rates | Rate:<br>a. $1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day.<br>b. $0.70 per 100 pounds for each additional amount transported or exchanged in a single day. | Rate:<br>$2.12 per 100 pounds for all pounds transported or exchanged in a single day. |

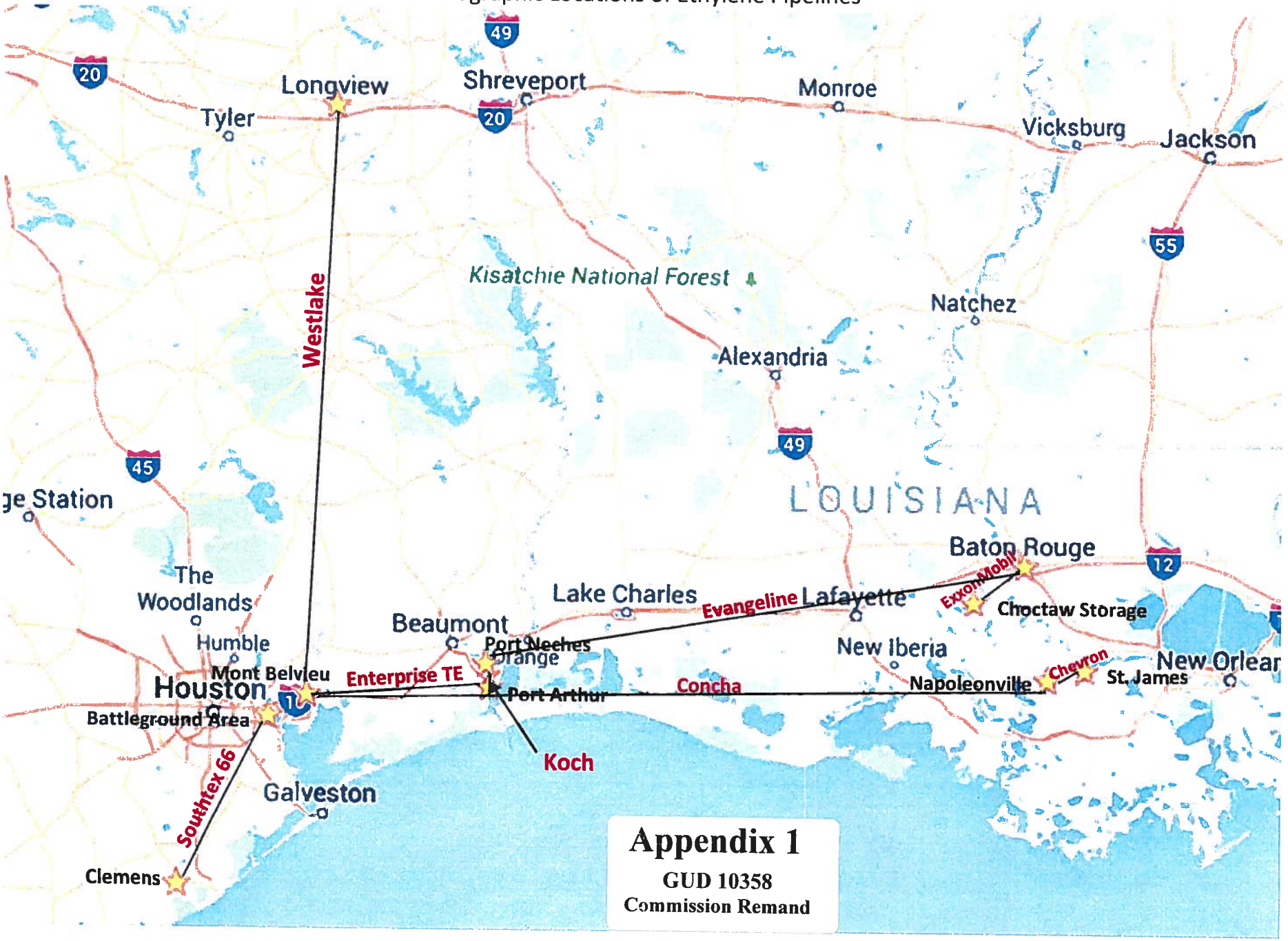
Respectfully submitted,

Cecile Hanna
Administrative Law Judge
Hearings Division

Rose Ruiz
Technical Examiner
Hearings Division

Schedule BHF-R2

Geographic Locations of Ethylene Pipelines



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# Texas Administrative Code

**Appendix 2**
**GUD 10358**
**Commission Remand**

| | |
|---|---|
| TITLE 16 | ECONOMIC REGULATION |
| PART 1 | RAILROAD COMMISSION OF TEXAS |
| CHAPTER 7 | GAS SERVICES DIVISION |
| SUBCHAPTER B | SPECIAL PROCEDURAL RULES |
| RULE §7.115 | Definitions |

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--Any affiliate as defined in Texas Utilities Code, §101.003.

(2) Allowance for funds used during construction (AFC)--The net cost of borrowed funds for the period of construction used for construction purposes and a reasonable rate on other funds when so used until included in the rate base.

(3) Apartment house--A building or buildings containing more than five dwelling units, all of which are rented or available to be rented primarily for nontransient use, with rental paid at intervals of one week or longer. The term "apartment house" shall include residential condominiums, whether rented or owner occupied.

(4) Apartment unit--A room or rooms in an apartment house suitable for occupancy as a residence containing kitchen and bathroom facilities.

(5) Appellate jurisdiction--Exclusive jurisdiction of the Commission in those cases in which a utility perfects an appeal pursuant to Texas Utilities Code, §103.054, from the decision of a municipality.

(6) Bulletin--A Gas Services Division publication published twice monthly containing information about the Division such as notices of hearings, final orders and decisions, rules, and other information of general interest to the public. The Division shall publish the bulletin on the Commission's web site and shall make a paper copy available for public inspection and copying.

(7) Commission--The Railroad Commission of Texas, including its staff or delegate.

(8) Common purchaser of gas--Every common purchaser of gas as defined in Texas Natural Resources Code, §111.081(a)(2).

(9) Construction work in progress (CWIP)--Funds expended by a gas utility which are irrevocably committed to construction projects not yet completed or placed into service.

(10) Cost of service adjustment clause--Any rate provision other than a purchased gas adjustment clause provided for in §7.5519 of this title (relating to Gas Cost Recovery), which operates to increase or decrease rates without prior consent or authority of the appropriate regulatory authority.

(11) Director--The Director of the Gas Services Division or the Director's delegate.

(12) Discrimination--Any material difference in rates, service, rules and regulations, or conditions of service for transportation services which unreasonably disadvantages or prejudices similarly-situated shippers.

(13) Domestic use--The use of natural gas for cooking, clothes drying, space heating, or water heating.

(14) Environs rates--Residential and commercial rates for a gas utility applicable to natural gas sales and service in unincorporated areas adjacent to or near incorporated cities and towns, aside from special rates as defined in this section.

(15) Gas-gathering utility--For the purposes of determining which annual report to file, a gas utility or public utility which employs a pipeline or pipelines and ancillary facilities thereto in the first taking or the first retaining of possession of gas produced by others which extends from any point where such gas is produced, purchased, or received to the trunk line or main line of transportation where such gas is sold or delivered, without regard to the size, the length, or the amount of such gas carried through such pipeline or pipelines to the trunk line or main line of transportation, thus having as its primary function the collecting or collecting and processing of gas produced by others as a preliminary incident to the transportation after it has been severed from the earth by production.

(16) Gas pipeline--Any gas pipeline under the provisions of Texas Utilities Code, Chapters 121 and 122.

(17) Gas Services Division or Division--The administrative subdivision of the Commission responsible for the regulation of the natural gas utility industry in Texas.

(18) Gas utility (utility)--Any gas utility or utility as defined in Texas Utilities Code, Title 3.

(19) Interim rate adjustment--A tariff or rate schedule that provides for an interim adjustment in a gas utility's monthly customer charge or initial block usage rate, made pursuant to §7.7101 of this title (relating to Interim Rate Adjustments), to recover the cost of changes in the utility's invested capital and related expenses and revenues, for providing gas utility service. An interim rate adjustment can be either an initial tariff or rate schedule or an annual adjustment to an existing interim rate adjustment tariff or rate schedule.

(20) Local distribution company--An entity that operates a retail gas distribution system.

(21) Lost and unaccounted for gas--The difference between the amount of gas metered into a distribution or transmission system and the amount metered out.

(22) Lost gas--The amount of gas which physically escapes into the ground or atmosphere from a distribution or transmission system, except for that gas which escapes as a part of an intentional testing procedure or purging operation performed during maintenance or construction activities.

(23) Master meter--A single large volume gas measurement device by which gas is metered and sold to a single purchaser who distributes the gas to one or more additional persons downstream from that meter.

(24) Mobile home--A structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(25) Mobile home or apartment resident--An occupant of a mobile home in a mobile home park or an occupant in an apartment house or apartment unit who is responsible for the payment rentals and receives gas through a submeter.

(26) Municipality--A city, incorporated village, or town, existing, created, or organized under the general, home-rule, or special laws of the state.

(27) Person--Has the same meaning as the definition in Texas Utilities Code, §101.003(10).

(28) Preference--Any material difference in rates, service, rules and regulations, conditions of service, or the dissemination or providing of information concerning transportation services which unreasonably advantages or favors similarly-situated shippers.

(29) Rate case--A statement of intent to increase rates filed at the Commission pursuant to Texas Utilities Code, §104.102.

(30) Qualifying offer--An offer to convert all of the residential or commercial customers' gas burning facilities to the lowest cost available alternative energy source, including, at a minimum, a single tank of normal size for the customer's premises filled once with any liquid alternative energy source. At the customer's election, the qualifying offer shall be the cash equivalent of the cost of conversion to the lowest cost available alternative energy source.

(31) Shipper--Any person or corporation for which a transporter is currently providing, has provided, or has pending a written request to provide transportation services.

(32) Similarly-situated shipper--Any shipper that seeks or receives transportation services under the same or substantially the same, physical, regulatory, and economic conditions of service as any other shipper of a transporter. In determining whether conditions of service are the same or substantially the same, the Commission shall evaluate the significance of relevant conditions, including, but not limited to, the following:

(A) service requirements;

(B) location of facilities;

(C) receipt and delivery points;

(D) length of haul;

(E) quality of service (firm, interruptible, etc.);

(F) quantity;

(G) swing requirements;

(H) credit worthiness;

(I) gas quality;

(J) pressure (including inlet or line pressure);

(K) duration of service;

(L) connect requirements; and

(M) conditions and circumstances existing at the time of agreement or negotiation.

(33) Special rates--Residential and commercial rates for a gas utility applicable to natural gas sales and service established pursuant to Commission orders applicable only to service by a given utility within a specified area and not specifically keyed to the rates charged in any incorporated area.

(34) Submeter--A single gas measurement device by which gas is metered to a mobile home unit, apartment house, or apartment unit downstream of a master meter.

(35) Transportation service--The receipt of a shipper's gas at a point or points on the facilities of a transporter, and redelivery of a shipper's gas by the transporter at another point or points on the facilities of the transporter, including exchange, backhaul, displacement, and other methods of transportation, provided, however, that the term "transportation service" shall not include processing services or the movement of gas to which the transporter has title.

(36) Transporter--Any common purchaser of gas, gas utility, or gas pipeline that provides gas gathering and/or transmission transportation service for a fee.

(37) Unaccounted for gas--Lost and unaccounted for gas less lost gas.

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**Source Note:** The provisions of this §7.115 adopted to be effective July 29, 2002, 27 TexReg 6687; amended to be effective December 27, 2004, 29 TexReg 11948

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# Texas Administrative Code

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|---|---|
| TITLE 16 | ECONOMIC REGULATION |
| PART 1 | RAILROAD COMMISSION OF TEXAS |
| CHAPTER 7 | GAS SERVICES DIVISION |
| SUBCHAPTER I | NATURAL GAS PIPELINE COMPETITION |
| RULE §7.7201 | Natural Gas Pipeline Competition Study Advisory Committee |

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Railroad Commission of Texas.

(2) Committee--The Natural Gas Pipeline Competition Study Advisory Committee of the Commission.

(b) Establishment; duration. The Natural Gas Pipeline Competition Study Advisory Committee is hereby established. The committee is abolished on December 31, 2006, unless the Commission amends this subsection to establish a different date.

(c) Purpose and tasks. The purpose of the committee is to give the Commission the benefit of the members' collective business, technical, and operating expertise and experience to help the Commission review competition in the Texas intrastate pipeline industry, assess the effect of current statutes and rules on such competition, and develop recommendations for changes to statutes or rules that may be necessary. The committee shall report its advice and recommendations in writing to the Commission no later than July 1, 2006.

(d) Nominations for committee membership. The Commission shall make nominations for membership on the committee. All members of the committee serve at the pleasure of the Commission. If a member resigns or otherwise vacates his or her position prior to the end of his or her term, the Commission shall appoint a replacement who shall serve the remainder of the unexpired term.

(e) Reimbursement of members' expenses. The Commission shall not reimburse members for travel or other expenses related to service on the committee.

(f) Committee records. The committee shall maintain and make available to the Commission records of each committee meeting.

**Source Note:** The provisions of this §7.7201 adopted to be effective April 3, 2006, 31 TexReg 2850

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# Ethylene Tariffs in Effect July 2013

| Date | Ethylene Pipeline Tariff | From | To | | Distance (miles) | Rate ($/100 lbs.) | Rate ($/100 lbs./Mile) | Rate ($/100 lbs./195 Miles) |
|---|---|---|---|---|---|---|---|---|
| 7/1/2013 | **SouthTex 66** | Brazoria Area | Pasadena | | 37 | $1.7665 | $0.0477 | $9.3099 |
| | | | Battleground Area | | 44 | $1.6930 | $0.0385 | $7.5031 |
| | | | Bayport | | 40 | $1.6500 | $0.0413 | $8.0438 |
| | | Battleground Area | Pasadena | | 8 | $0.1355 | $0.0169 | $3.3028 |
| 7/1/2013 | **Chevron Phillips Chemical Pipeline Co LLC** | Napoleonville | St. James Plant | | 13 | $0.1344 | $0.0103 | $2.0160 |
| 4/1/2008 | **ExxonMobil Pipeline Company** | Baton Rouge | Choctaw Storage | | 15 | $0.2000 | $0.0133 | $2.6000 |
| | | | Dow Chemical (Iberville) | | 12 | $0.2000 | $0.0167 | $3.2500 |
| | | | GA Gulf Plant | | 13 | $0.2000 | $0.0154 | $3.0000 |
| | | | Shinteck PVC | | 13 | $0.2000 | $0.0154 | $3.0000 |
| 7/1/2013 | **Concha Chemical Pipeline LLC** | Napoleonville | Petrologistics Choctaw | | 23 | $0.7300 | $0.0317 | $6.1891 |
| | | | Borden Plant | | 20 | $0.7800 | $0.0390 | $7.6050 |
| | | | Geismar | | 20 | $0.6900 | $0.0345 | $6.7275 |
| | | | Plaquemine | | 27 | $3.4900 | $0.1293 | $25.2056 |
| | | | Lake Charles | | 133 | $3.4900 | $0.0262 | $5.1169 |
| | | | Mont Belvieu | | 230 | $3.4900 | $0.0152 | $2.9589 |
| | | Mont Belvieu | Napoleonville | | 230 | $3.4900 | $0.0152 | $2.9589 |
| | | | Plaquemine | | 222 | $3.4900 | $0.0157 | $3.0655 |
| | | | Lake Charles | | 103 | $3.4900 | $0.0339 | $6.6073 |
| | | Lake Charles | Napoleonville | | 133 | $3.5000 | $0.0263 | $5.1316 |
| | | | Plaquemine | | 120 | $3.5000 | $0.0292 | $5.6875 |
| | | | Mont Belvieu | | 103 | $3.5000 | $0.0340 | $6.6262 |
| | | PetroLogistics Choctaw | Napoleonville | | 23 | $3.5000 | $0.1522 | $29.6739 |
| | | Orange | Napoleonville | | 163 | $3.4900 | $0.0214 | $4.1752 |
| | | | Mont Belvieu | | 71 | $3.4900 | $0.0492 | $9.5852 |
| | | | Plaquemine | | 150 | $3.4900 | $0.0233 | $4.5370 |
| | | Napoleonville | Orange | | 163 | $3.4900 | $0.0214 | $4.1752 |
| | | Mont Belvieu | Orange | | 71 | $3.4900 | $0.0492 | $9.5852 |
| | | Plaquemine | Orange | | 150 | $3.4900 | $0.0233 | $4.5370 |
| 10/1/2010 | **Koch Pipeline Company LP** | Port Arthur | Port Neches | | 8 | $0.0075 | $0.0009 | $0.1828 |
| 11/1/2012 | **Enterprise TE Products Pipeline Company** | Mont Belvieu | Fannett | (a) | 40 | $0.0768 | $0.0019 | $0.3744 |
| | | | Port Arthur | (a) | 57 | $0.0768 | $0.0013 | $0.2627 |
| | | | Port Neches | (a) | 57 | $0.0768 | $0.0013 | $0.2627 |
| | | Port Arthur | Fannett | (a) | 19 | $0.0768 | $0.0040 | $0.7882 |
| | | | Mont Belvieu | (a) | 57 | $0.0768 | $0.0013 | $0.2627 |
| | | | Port Neches | (a) | 8 | $0.0768 | $0.0096 | $1.8720 |
| | | Mont Belvieu | Fannett | | 40 | $1.6698 | $0.0417 | $8.1403 |
| | | | Port Arthur | | 57 | $1.6698 | $0.0293 | $5.7125 |
| | | | Port Neches | | 57 | $1.6698 | $0.0293 | $5.7125 |
| | | Port Arthur | Fannett | | 19 | $1.6698 | $0.0879 | $17.1374 |
| | | | Mont Belvieu | | 57 | $1.6698 | $0.0293 | $5.7125 |
| | | | Port Neches | | 8 | $1.6698 | $0.2087 | $40.7014 |

(a) Incentive Rate

**Appendix 3**

**GUD 10358**

**Commission Remand**